

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



COMMONWEALTH REGISTER

VOLUME 43
NUMBER 04
APRIL 28, 2021

.....

COMMONWEALTH REGISTER

VOLUME 43
NUMBER 04.
APRIL 28, 2021

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Number: 2021-002
Subject: Final Order for Enforcement Actions 20-001
(consolidated) and 20-003 (consolidated)
Authority: P.L. 18-56, 19-24 and 21-38, and
NMIAC Chapter 175-10.1
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Number: 2021-003
Subject: Order Prohibiting the Issuance of New or
Renewal Licenses for Junket Operations
Pending a Review by the Commission of
Part 2600 of the Regulations, and Directing
the Executive Director Not to Process any
Applications for Junket Licenses.
Authority: P.L. 18-56, 19-24 and 21-38, and
NMIAC Chapter 175-10.1
Commonwealth Casino Commission..... 045933



Office of the Secretary
Department of Finance



P.O. Box 5234 CHRBSAIPAN, MP 96950

TEL (670) 664-1100 FAX: (670) 664-1115

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF
THE DEPARTMENT OF FINANCE – DIVISION OF CUSTOMS SERVICE**

*Prior Publication in the Commonwealth Register as Proposed Regulations
Volume 43 Number 02 pp 045408 – 045415, February 28, 2021*

Regulations of the Department of Finance: Chapter 70-10 Customs Service Division

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

I also certify by signature below that as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations, and that they are being adopted without modification or amendment.

PRIOR PUBLICATION: The prior publication was as stated above.

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None

AUTHORITY: These regulations are promulgated under the authority set forth in the Commonwealth Code including, but not limited to, 1 CMC 2553, 1 CMC 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 and 4 CMC § 1820.

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

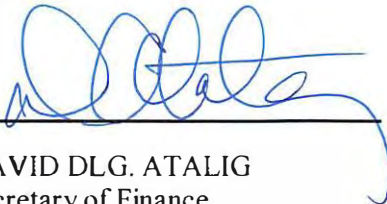
COMMENTS AND AGENCY CONCISE STATEMENT: Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

ATTORNEY GENERAL APPROVAL FOR NON-MODIFIED REGULATIONS: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC § 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or

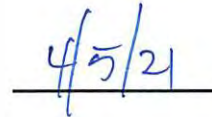
instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law.). As such, further approval is not required.

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on 5th day of April 2021, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



DAVID DLG. ATALIG
Secretary of Finance
Department of Finance

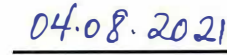


Date

Filed and
Recorded by:



ESTHER SN. NESBITT
Commonwealth Registrar



Date

Pursuant to I CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and I CMC §9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published. I CMC § 2153(f) publication of rules and regulations).

Dated the 6 day of April, 2021.



EDWARD MANIBUSAN
Attorney General



**PUBLIC NOTICE OF ADOPTION OF PROPOSED RULES AND REGULATIONS FOR
THE CNMI CANNABIS COMMISSION**

INTENDED ACTION TO ADOPT THESE PROPOSED RULES AND REGULATIONS:

The Commonwealth of the Northern Mariana Islands, CNMI Cannabis Commission (“the Commission”) intends to adopt as permanent regulations the attached Proposed Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The Regulations would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

AUTHORITY: The Commission has the authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Public Laws 20-66 and Public Law 21-05, including but not limited to 4 CMC 53008(b).

THE TERMS AND SUBSTANCE: The attached Rules and Regulations supplement the current regulations which govern and regulate the Cannabis Industry in the CNMI. The amendments declare unsuitable certain methods of operation which would negatively affect the cannabis industry in the CNMI.

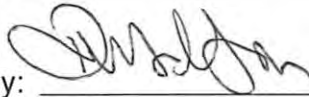
THE SUBJECTS AND ISSUES INVOLVED: These rules and regulations:

1. Amend §180-10.1-335(B)(4) to add in subsection (i) to read “for the purpose of this, a cultivation lot is defined as a unit of land that can be legally described by metes and bounds”.
2. Establish §180-10.1-1401 Laboratory Licensing Requirements.
3. Establish §180-10.1-1405 Laboratory Tracking and Reporting.
4. Establish §180-10.1-1410 Laboratory Licensee Prohibited Conduct.
5. Establish section Part 1600 Marijuana Research Certificate.
6. Amend §180-10.1-1601 to establish Application for Marijuana Research Certificate.
7. Establish §180-10.1-1605 Marijuana Research Certificate Privileges; Prohibitions.
8. Establish §180-10.1-1501 Marijuana Events Purpose
9. Establish §180-10.1-1505 Marijuana Events Definitions
10. Establish §180-10.1-1510 Marijuana Events Procedure
11. Establish §180-10.1-1515 Marijuana Events Temporary Licensed Premises Designation
12. Establish §180-10.1-1520 Marijuana Events Privileges; Prohibitions
13. Establish §180-10.1-1525 Marijuana Events Public Notice
14. Establish §180-10.1-1530 Marijuana Events Fees
15. Amend §180-10.1-610(a)(1) to read as “Between January 1, 2021 and January 1, 2022 a marijuana producer may receive immature marijuana plants and seeds from any source within the Commonwealth for up to one year following initial licensure by the Commission;”

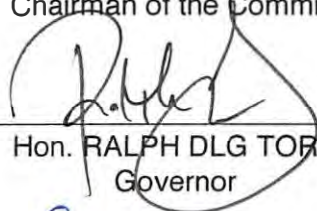
DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district; the notice shall be both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).

TO PROVIDE COMMENTS: Send or deliver your comments to CNMI Cannabis Commission, *Attn: New Cannabis Commission Rules and Regulations*, at the above address, fax or email address, with the subject line "New Cannabis Commission Rules and Regulations". Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2))

The CNMI Cannabis Commission approved the attached Regulations on the 10th day of December, 2020.

Submitted by: 
NADINE DELEON GUERRERO
Chairman of the Commission

12.10.2020
Date

Concurred by: 
Hon. RALPH DLG TORRES
Governor


12/22/2020
Date

Filed and Recorded by: 
ESTHER SN NESBITT
Commonwealth Registrar

04.01.2021
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

Dated the 30th day of March, 2021


Hon. EDWARD MANIBUSAN
Attorney General



COMMONWEALTH GI SANGKATTAN NA ISLAS MARIÑAS
KUMISIÓN CANNABIS

P.O. Box 500135 Saipan, MP 96950 | media@cnmicannabis.org

**NUTISIAN PUPBLIKU PUT I ADÁPTASIÓ I MANMAPROPONI NA AREKLAMENTU
YAN REGULASIÓ SIHA PARA I KUMISIÓ CANNABIS I CNMI**

I AKSIÓN NI MA'INTENSIONA PARA U MA'ADÁPTA ESTI I MANMAPROPONI NA AREKLAMENTU YAN REGULASIÓ SIHA: I Sangkattan na Islas Mariñas (“CNMI”), i Kumision Cannabis I CNMI (“i Kumision”) ha intensiona para u adápta kumu petmanienti na regulasion i mañechettun na Manmaproponi na Regulasion, sigun para i manera nu i Ákton Administrative Procedure, 1 CMC § 9104(a). I Regulasion siempre umifektibu gi halum dies (10) dihas dispues di adáptasion yan publikasion gi halum Rehistran Commonwealth. (1 CMC § 9105(b))

ÁTURIDÁT: AUTHORITY: I Kumision gai aturidát para u adápta i areklamentu yan i regulasion siha para u cho'gui mo'na i ubligasion yan i responsabilidát-ñiha siha sigun para Lai Pupbliku 20-66 yan Lai Pupbliku 21-05, kuntu lão ti chi'ña para 4 CMC 5300B(b).

I TEMA YAN I SUSTÁNSIAN I PALÁBRA SIHA: I mañechettun na Areklamentu yan Regulasion siha ha “supplement” i prisenti na regulasion siha ni ha gubietna yan maneha i Industrian “Cannabis” gi halum iya CNMI. I amenda siha ha diklára na ti propiu i manmetton na manera nu operasió siha ni siempre ha afekta “negatively” i industrian “cannabis” gi halum iya CNMI.

SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA: Esti na areklamentu yan regulasion siha:

1. Amenda §1B0-10.1-335(B)(4) para u na'danña hãlum gi “subsection (i) para u mataitai “para hinangai nu esti, i “cultivation lot” madifina komu “unit” nu tanu’ na siña gi ligát madiskribi “metes” yan “bounds”.
2. Amenda §1B0-10.1-1401 para u istapblesi i “Laboratory Licensing Requirements”.
3. Amenda §1B0-10.1-1405 para u istapblesi i “Laboratory Tracking and Reporting”.
4. Amenda §1B0-10.1-1410 para u istapblesi i “Laboratory Licensee Prohibited Conduct”.
5. Istapblesi seksiona Pãtti 1600 “Marijuana Research Certificate”.
6. Amenda §1B0-10.1-1601 para u istapblesi to Aplikasió para “Marijuana Research Certificate”.
7. Amenda §1B0-10.1-1605 para u istapblesi “Marijuana Research Certificate Privileges; Prohibitions.
- B. Amenda §1B0-10.1-1501 para u istapblesi “Marijuana Events Purpose”
9. Amenda §1B0-10.1-1505 para u istapblesi “Marijuana Events Definitions”
10. Amenda §1B0-10.1-1510 para u istapblesi “Marijuana Events Procedure”
11. Amenda §1B0-10.1-1515 para u istapblesi “Marijuana Events Temporary Licensed Premises Designation”
12. Amenda §1B0-10.1-1520 para u istapblesi “Marijuana Events Privileges;

Prohibitions”

13. Amenda §180-10.1-1525 para u istapblesi “Marijuana Events Public Notice”
14. Amenda §180-10.1-1530 para u istapblesi “Marijuana Events Fees”
15. Amenda § 180-10.1-610(a)(1) para u mataitai “Gi halum lneru 1, 2021 yan lneru 1, 2022 i manprududusi marijuana siña manrisibi “immature marijuana” na tinanum yan simiya ginin maseha hâyi gi halum iya Commonwealth para hulu’ asta un âñu tinattiyin i lisensia ginin i Kumisiôn;”

DIREKSION PARA U MAPO’LU YAN PARA PUPBLIKASION: Esti i Manmaproponi na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni manmaproponi yan nuebu na ma’adâpta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi kumbinienti na lugât siha gi halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, i nutisia debi u parehu Inglis yan prinsipât na linguâhin natibu. (1 CMC § 9104(a)(1)).

PARA U PRUBENIYI UPIÑON SIHA: TO PROVIDE COMMENTS: Na’hanao pat intrega hâlum i upiñon-mu guatu gi Kumision Cannabis I CNMI, *Attn: Nuebu na Areklamentu yan Regulasion Kumision Cannabis siha*, gi sanhilu’ na address, fax pat email address ni malista gi sanhilu’, yan i suhetu na râya “Nuebu na Areklamentu yan Regulasion Kumision Cannabis siha”. I upiñon siha debi na u marisibi gi hâlum 30 dihas ginin i fetcha nu pupublikasion esti na nutisia. Put fabot na’hâlum iyon-mu imfotmasion, views pat agumentu siha. (1 CMC § 9102(a)(2)).

I Kumision Cannabis I CNMI ma’aprueba i mañechettun na Regulasion siha gi diha 10th gi December 2020.

Nina'hâlum as:



NADINE DELEON GUERRERO
Kabesiyu, Kumision Cannabis I CNMI

12-10-2020

Fetcha

Kininfotmi as:



DINIKNU RALPH DLG TORRES
Maga'lâhi

07 JAN 2021

Fetcha

Pine'lu Yan
Ninota as:



ESTHER SN NESBITT
Rehistran Commonwealth

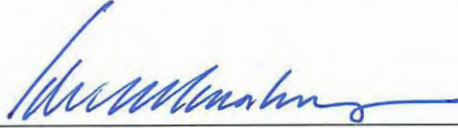
04-01-2021

Fetcha

Sigun para 1 CMC § 2153(e) (I Abugâdu Hinerât ma aprueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) (hentan inapruuban Abugâdu Hinerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan

manma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Hinerât yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha).

Mafetcha gi diha 30th, gi March, 2020²¹



DINIKNU EDWARD MANIBUSAN
Henerât Abugâdu



**ARONGORONGOL TOULAP REEL ADÓPTAAL POMMWOL ALLÉGH ME
MWÓGHUTUGHUT NGÁLI CNMI CANNABIS COMMISSION**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI ALLÉGH ME MWÓGHUTUGHUT: Commonwealth Téél Falúw kka Efáng llól Marianas, CNMI Cannabis Commission (“Commission we”) re mángemángil rebwe adóptááli Pommwol Mwóghutughut ikka e appasch bwe ebwe lléghló, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Ebwe bwunguló Mwóghutughut kkal llól seigh ráál mwiril aal akkatééwow me llól Commonwealth Register. (1 CMC § 9105(b))

BWÁNGIL: Eyoor bwángil Commission reel rebwe adóptááli allégh me mwóghutughut llól lemelem sáangi Alléghúl Toulap 20-66 me Alléghúl Toulap 21-05, ewwal schuulong nge ese yoor pilil ngáli 4 CMC 53008(b).

KKAPASAL ME AWEEWEL: Allégh me Mwóghutughut ikka e appasch e schuu fengál me mwóghutughut ikka e lo reel ebwe lemeli me ayoora mwóghutughut ngáli “Cannabis Industry” llól CNMI. Liiwel e aronga bwe ese ffil akkáaw mwóghutughut iye e “negative” aal siiwel ngáli “cannabis industry” me llól CNMI.


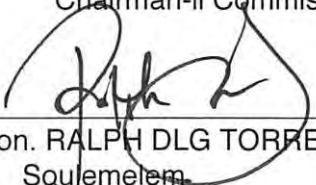
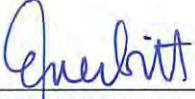
KKAPASAL ME ÓUTOL: Allégh me mwóghutughut kkal:

1. Liiweli §180-10.1-335(B)(4) ebwe aschuulong llól subsection (i) ebwe arághári bwe “bwulul mille, faal “cultivation lot” nge eew “unit” reel falúw iye re lighiti me aita sáangi “metes” me “bounds”.
2. Liiweli §180-10.1-1401 ebwe itittiw “Laboratory Licensing Requirements”.
3. Liiweli §180-10.1-1405 ebwe itittiw “Laboratory Tracking and Reporting”.
4. Liiweli §180-10.1-1410 ebwe itittiw “Laboratory Licensee Prohibited Conduct”.
5. Ebwe itittiw táлил Part 1600 “Marijuana Research Certificate”.
6. Liiweli §180-10.1-1601 ebwe itittiw “Applicant for Marijuana Research Certificate”.
7. Liiweli §180-10.1-1605 ebwe itittiw “Marijuana Research Certificate Privileges; Prohibitions”.
8. Liiweli § 180-10.1-1501 ebwe itittiw “Marijuana Events Purpose”.
9. Liiweli § 180-10.1-1505 ebwe itittiw “Marijuana Events Definitions”.
10. Liiweli § 180-10.1-1510 ebwe itittiw “Marijuana Events Procedure”.
11. Liiweli § 180-10.1-1515 ebwe itittiw “Marijuana Events Temporary Licensed Premises Designation”.
12. Liiweli § 180-10.1-1520 ebwe itittiw “Marijuana Events Privileges; Prohibitions”.
13. Liiweli § 180-10.1-1525 ebwe itittiw “Marijuana Events Public Notice”.
14. Liiweli § 180-10.1-1530 ebwe itittiw “Marijuana Events Fees”.
15. Liiweli § 180-10.1-610(a)(1) ebwe itittiw “Leepatal Schoow 1, 2021 me Schoow 1, 2022 bwe emmwelil schóól fféerúl marijuana ebwe risibi “immature marijuana plants and seeds” sáangi inamwo iyo llól Commonwealth ngáli eew ráágh mwiril aal “initial licensure” sáangi Commission;”

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow Pommwol Mwóghutughut kkal me llól Commonwealth Register llól táilil pommwol me ffél mwóghutughut ikka ra adóptáali (1 CMC § 9102(a)(1)) me ebwe appaschetá llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district; ebwe yoor arongorong llól English me mwáliyaasch. (1 CMC § 9104(a)(1)).

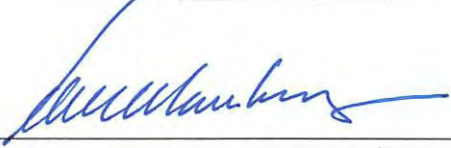
REEL ISIISILONGOL KKPAS: Afanga ngáre bwughilól yóómw ischil kkapas ngáli CNMI Cannabis Commission, *Attn: New Cannabis Commission Rules and Regulations*, reel féléféle iye e lo weiláng, fax ngáre email address, fengál me subject line "New Cannabis Commission Rules and Regulations". Ebwe toolong ischil kkapas llól eligh ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views ngáre angiingi. (1 CMC § 9104(a)(2))

CNMI Cannabis Commission ra átirowa Mwóghutughut ikka e appasch wóol 10th ráálil March, 2020.

Isáliyalong:	 NADINE DELEON GUERRERO Chairman-il Commission	<u>12-10-2020</u> Ráál
Átirowal:	 Hon. RALPH DLG TORRES Soulemelem	<u>07 JAN 2021</u> Ráál
Ammwelil:	 ESTHER SN NESBITT Commonwealth Registrar	<u>04.01.2021</u> Ráál

Sáangi 1 CMC § 2153(e) (sáangi átirowal AG reel mwóghutughut kkal bwe aa ffil reel fféerúl) me 1 CMC § 9104(a)(3) (sáangi átirowal AG) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Alléghúl CNMI me ebwe akkatééwow, 1 CMC § 2153(f) (akkatééwowul allégh me mwóghutughut).

Aghikkilátiw wóol 30th ráálil March, 2020 21


Hon. EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

TITLE 180
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
(CNMI) CANNABIS COMMISSION

CHAPTER 180-10 CNMI Cannabis Commission
Subchapter 180-10.1 CNMI Cannabis Commission Rules and Regulations
Subchapter 180-10.2 Code of Ethics

CHAPTER 180-10
CNMI CANNABIS COMMISSION

SUBCHAPTER 180-10.1
CNMI CANNABIS COMMISSION RULES AND REGULATIONS

Part 001

**ISSUANCE OF REGULATIONS;
CONSTRUCTION; DEFINITIONS**

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§ 180-10.1-005 Construction
§ 180-10.1-010 Severability
§ 180-10.1-015 Preemption
§ 180-10.1-020 Practice where Regulations Do Not Govern
§ 180-10.1-025 Suspension of Regulations
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§ 180-10.1-001	Promulgation. Amendment, modification and repeal
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§ 180-10.1-035	Headings
§ 180-10.1-040	Applicability
§ 180-10.1-045	Definitions
§ 180-10.1-050	Further Definitions

§ 180-10.1-001 Promulgation, amendment, modification and repeal. The following regulations are issued pursuant to Public Law 20-66 and Public Law 21-05, in accordance with the procedures promulgated by the Administrative Procedures Act, 1 CMC § 9101 et seq. The Commission will, from time to time, promulgate, amend and repeal such regulations, consistent with the policy, objects and purposes of Public Law 20-66 and Public Law 21-05, as the Commission may deem necessary or desirable in carrying out the policy and provisions of the laws of the Commonwealth. These regulations supersede any other regulations previously promulgated.

§ 180-10.1-005 Construction:

- (a) Nothing contained in these regulations shall be construed as to conflict with any provision of the Act.
- (b) These rules and regulations shall be interpreted in accordance with generally accepted principles of statutory construction.
- (c) These rules and regulations shall be liberally construed to permit the Commission to effectively carry out its statutory functions and to secure a just and expeditious determination of issues properly presented to the Commission.

- (d) Nothing in these rules exempts a licensee or licensee representative from complying with any other applicable local laws.
- (e) Licensure under these rules does not protect a person from possible criminal prosecution under federal law.

§ 180-10.1-010 Severability. If any clause, sentence, subparagraph, paragraph, subsection, section, chapter, or other portion of these entire rules and regulations or the application thereof to any person or circumstance shall be held to be invalid, such holding shall not affect, impair, or invalidate the remainder of these rules and regulations or the application of such portion held invalid to any other person or circumstances, but shall be confined in its operation to the clause, sentence, subparagraph, paragraph, subsection, section, chapter, or other portion thereof directly involved in such holding or to the person or circumstance therein involved.

§ 180-10.1-015 Preemption. The Commission shall have exclusive jurisdiction over all matters delegated to it or within the scope of its power under the provisions of the Act and these Regulations. These Regulations supersede any bylaws of the Commission.

§ 180-10.1-020 Practice where Regulations Do Not Govern. In any matter not governed by these Regulations, the Commission shall exercise its discretion so as to carry out the purposes of the Act.

§ 180-10.1-025 Suspension of Regulations. On its own or a party's motion, the Commission may - to expedite its decision or for other good cause - suspend any provision of these Regulations in a particular matter and order proceedings as it directs, except the Commission may not contradict any explicit requirement of the Act

§ 180-10.1-030 Definitions, words and terms; tense, number and gender. In interpreting these regulations, except when otherwise plainly declared or clearly apparent from the context: Words in the present tense include the future tense; The singular includes the plural and the plural includes the singular; and words of one gender include the other genders.

§ 180-10.1-035 Headings. The heading of a title, subtitle, chapter, subchapter, part, subpart, section or subsection does not limit or expand the meaning of a regulation.

§ 180-10.1-040 Applicability. A person may not produce, process, store, transport, sell, sample, test, or deliver marijuana for commercial recreational use without a license from the Commission or as otherwise authorized under these rules.

§ 180-10.1-045 Definitions. In this Subchapter 180-10.1 the following words have the following meanings, unless some contrary meaning is required:

- (a) "Act" means Public Law 20-66, as amended by Public Law 21-05 and as it may be amended or supplemented by subsequent legislation.
- (b) "Cannabis" means a genus of flowering plants that includes three putative varieties; cannabis sativa, cannabis indica, and cannabis ruderalis. The cannabis genus has two main species popularly known as cannabis sativa and cannabis indica:

- (1) Cannabis sativa plants are known to stretch to extraordinary heights of up to 20 feet when grown outside, and have much longer vegetation periods. Once the plant begins to flower, it can take anywhere from ten to sixteen weeks to fully mature. Since vegetation periods are so long, these plants typically produce a much higher yield than indica strains (3 ounces to 1 pound per plant), but possess a lower THC percentage than indica on average (around 12–16%);
 - (2) Cannabis indica are short and stout in composure (2–4 feet tall), and typically yield smaller (1.5 to 2.5 ounces per plant), higher quality crops (- 18% THC) than cannabis sativa. The plants are believed to have originated in the Middle East (Pakistan & Afghanistan), and thrive in cooler environments. Indica strains are typically darker green than sativa and have shorter, fatter leaves.
 - (3) The main active ingredient in cannabis is called delta-9 tetrahydrocannabinol, commonly known as THC. This is the part of the plant that gives the “high.” There is a wide range of THC potency between cannabis products.
 - (4) Cannabis is used in three main forms: marijuana, hashish, and hash oil. Marijuana is made from dried flowers and leaves of the cannabis plant. It is the least potent of all the cannabis products and is usually smoked or made into edible products like cookies or brownies. Hashish is made from the resin (a secreted gum) of the cannabis plant. It is dried and pressed into small blocks and smoked. It can also be added to food and eaten. Hash oil, the most potent cannabis product, is a thick oil obtained from hashish. It is also smoked.
 - (5) Cannabis is usually smoked in hand-rolled cigarettes (known as “joints”) or in special water pipes (“bongs”). These pipes or bongs can be bought or made from things such as orange juice containers, soft drink cans, or even toilet paper rolls.
- (c) “Caregiver” means a person who is 21 years of age or older who is responsible for the medical marijuana patient’s needs to the production, processing, keeping, or storage of homegrown marijuana at a household or cultivation site.*
 - (d) “Commerce” means the Department of Commerce.
 - (e) “Commission” means the Cannabis Commission.
 - (f) “Consumer” means a person who purchases, acquires, owns, holds, or uses marijuana items other than for the purpose of resale.
 - (g) “Commonwealth” or “CNMI” means the Commonwealth of the Northern Mariana Islands.
 - (h) “Cultivation site” means a site in which marijuana is produced other than a household for non-commercial purposes. A cultivation site may include, but is not limited to, a farm, ranch, land parcel, lot, greenhouse, warehouse, building, room, or container.
 - (i) “Debilitating medical condition” means:
 - (1) cancer, glaucoma, positive status for human immunodeficiency virus (HIV), acquired immune deficiency syndrome (AIDS), hepatitis C, amyotrophic lateral sclerosis, Crohn’s disease, ulcerative colitis, agitation of Alzheimer’s disease, post-traumatic stress disorder, or the treatment of these conditions;
 - (2) a chronic or debilitating disease or medical condition or its treatment that produces one or more of the following: stroke, diabetes, Parkinson’s disease, Wilson’s disease, traumatic brain injury, ADD/ADHD, muscular dystrophy (MD), cerebral palsy, asthma, and other types of immunomodulated inflammatory diseases, cachexia or wasting syndrome; severe, debilitating pain; severe nausea; seizures; or severe and

persistent muscle spasms, including, but not limited to, those characteristic of multiple sclerosis; or

- (3) any other serious medical condition or its treatment provided for by the Commission regulation in consultation with the Commonwealth Healthcare Corporation (CHCC) or other medical professionals.
- (j) “Division of Agriculture” means the Department of Lands and Natural Resources Division of Agriculture.
- (k) “Controlled substance” means a drug or its immediate precursor classified in Schedules I through V by 6 CMC §§ 2111–2123. The term “controlled substance,” as used in the Commonwealth Code does not include marijuana.
- (l) “Financial consideration,” except as provided in of this subsection, means value that is given or received directly or indirectly through sales, barter, trade, fees, charges, dues, contributions, or donations.
- (1) “Financial consideration” does not mean any of the following:
- i. Homegrown marijuana made by another person.
 - ii. Homemade marijuana products made by another person.
- (m) “Hemp” means the plant of the genus cannabis and any part of the plant, whether growing or not, with a delta9-tetrahydrocannabinol concentration that does not exceed three tenths percent (0.3%) on a dry weight basis for any part of the plant cannabis, or per volume or weight of marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant cannabis regardless of moisture content.
- (n) “Homegrown” or “homemade” means grown or made by a person 21 years of age or older for non-commercial purposes.
- (o) “Homegrown marijuana registry” means a record maintained by the Commission of the names and addresses of persons who are 21 years of age or older or medical marijuana patients authorized to produce, process, keep, or store homegrown marijuana at a household or a cultivation site for non-commercial purposes.
- (p) “Homegrown marijuana registry card” means a card issued by the Commission to a person who is 21 years of age or older or a medical marijuana patient that is authorized to produce, process, keep, or store homegrown marijuana at a household or a cultivation site for non-commercial purposes.
- (q) “Household” means a housing unit, and includes any place in or around the housing unit at which the occupants of the housing unit are producing, processing, keeping, or storing marijuana, marijuana products, or marijuana extracts, whether homemade or purchased.
- (r) “Housing unit” means a house, an apartment, a mobile home, a group of rooms, or a single room that is occupied as separate living quarters, in which the occupants live and eat separately from any other persons in the building and which have direct access from the outside of the building or through a common hall.
- (s) “Immature marijuana plant” means a marijuana plant with no observable flowers or buds.
- (t) “Licensee” means any person holding a license issued under this chapter, or any person holding a license or permit issued under any regulation promulgated pursuant to this chapter.
- (u) “Licensee representative” means an owner, director, officer, manager, employee, agent, or other representative of a licensee, to the extent such person acts in such representative capacity.

- (v) “Marijuana” means all parts of the plant of the genus cannabis, the seeds thereof, and every compound, manufacture, salt derivative, mixture, or preparation of the plant and its seeds whether growing or not, regardless of moisture content, other than marijuana extracts. “Marijuana” does not include hemp, nor does it include fiber produced from the stalks, oil or cake made from the seeds of the plant, sterilized seed of the plant which is incapable of germination, or the weight of any other ingredient combined with marijuana to prepare topical or oral administrations, food, drink, or other product.
- (w) “Marijuana establishment” means an entity licensed by the Commission as a marijuana producer, marijuana lounge, marijuana testing facility, marijuana processor, a marijuana retailer, or a marijuana wholesaler.
- (x) “Marijuana extract” or “Marijuana concentrate” means a product obtained by separating resins from marijuana by solvent extraction, using solvents other than water or vegetable glycerin, such as butane, hexane, isopropyl alcohol, ethanol, and carbon dioxide: which is produced only by a licensed marijuana establishment.
- (y) (1) “Marijuana flowers” means the flowers of the plant cannabis family Moraceae.
(2) “Marijuana flowers” does not include any part of the plant other than the flowers.
- (z) “Marijuana items” means marijuana, marijuana products, and marijuana extracts.
(1) “Marijuana leaves” means the leaves of the plant Cannabis family Moraceae.
(2) “Marijuana leaves” does not include any part of the plant other than the leaves.
- (aa) “Marijuana Lounge” means an entity licensed by the Commission to sell and/or allow for the on-site consumption of marijuana items.
(1) “Class 1” means an entity licensed to sell marijuana items for on-site consumption.
(2) “Class 2” means an entity licensed to allow for the on-site consumption of marijuana items, but for which the sale of marijuana items is prohibited.
- (bb) “Marijuana processor” means a person who processes marijuana items in this Commonwealth.
- (cc) “Marijuana producer” means a person who produces marijuana in this Commonwealth.
- (dd) (1) “Marijuana products” means products that contain marijuana or marijuana extracts and are intended for consumption, that include, but are not limited to, being edible, drinkable, or topical.
(2) “Marijuana products” does not mean:
 - (i) Marijuana, by itself; or
 - (ii) A marijuana extract, by itself.
- (ee) “Marijuana retailer” means a person who sells marijuana items to a consumer in this Commonwealth.
- (ff) “Marijuana testing facility” means an entity licensed by the Commission to analyze and certify the safety and potency of marijuana items.
- (gg) “Marijuana wholesaler” means a person who purchases marijuana items in this Commonwealth for resale to a person other than a consumer in this Commonwealth, such as a licensed marijuana establishment.
- (hh) “Mature marijuana plant” means any marijuana plant that is not an immature marijuana plant. A mature marijuana plant has observable flowers or buds.
- (ii) “Medical marijuana” or “medicinal marijuana” means marijuana used by a person for medical or medicinal purposes.

- (jj) “Medical marijuana patient” means a person who uses marijuana as recommended by a doctor or other medical authority in the treatment of a debilitating medical condition or any other medical condition.
- (kk) “Micro producer” means a person with a micro production license to produce marijuana in this Commonwealth.
- (ll) “Minor” means a person under the age of 21 years old for purposes of this chapter.
- (mm) “Non-commercial” means not dependent or conditioned upon the provision or receipt of financial consideration.
- (nn) “Person” means any natural person, corporation, professional corporation, nonprofit corporation, cooperative corporation, profit or nonprofit unincorporated association, business trust, limited liability company, general or limited partnership, joint venture, or any other legal entity.
- (oo) “Premises” or “licensed premises” or “marijuana establishment” means a location licensed under this chapter and includes:
 - (1) All enclosed areas at the location that are used in the business operated at the location, including offices, kitchens, rest rooms, and storerooms, including all public and private areas;
 - (2) All areas outside of a building that the Commission has specifically licensed for the consumption, production, processing, wholesale sale, or retail sale of marijuana items; and
 - (3) For a location that the Commission has specifically licensed for the production of marijuana outside of a building, the entire lot or parcel, that the licensee owns, leases, or has a right to occupy.
- (pp) (1) “Processes” means:
 - (i) The processing, compounding, or conversion of marijuana into marijuana products or marijuana extracts;
 - (ii) The processing, compounding, or conversion of marijuana, either directly or indirectly by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis;
 - (iii) The packaging or repackaging of marijuana items; or
 - (iv) The labeling or relabeling of any package or container of marijuana items.
 (2) “Processes” does not include:
 - (i) The drying of marijuana by a marijuana producer, if the marijuana producer is not otherwise processing marijuana; or
 - (ii) The packaging and labeling of marijuana by a marijuana producer in preparation for delivery to a marijuana processor, marijuana retailer, marijuana wholesaler, or marijuana lounge.
- (qq) (1) “Produces” means the manufacture, planting, cultivation, growing, or harvesting of marijuana.
- (2) “Produces” does not include:
 - (i) The drying of marijuana by a marijuana processor, if the marijuana processor is not otherwise producing marijuana; or
 - (ii) The cultivation and growing of an immature marijuana plant by a marijuana processor, marijuana lounge, marijuana wholesaler, or marijuana retailer if the

marijuana processor, marijuana lounge, marijuana wholesaler, or marijuana retailer purchased or otherwise received the plant from a licensed marijuana producer.

(rr) “Public place” or “public property” means a place to which the general public has access and includes, but is not limited to, beaches, hallways, lobbies and other parts of apartment houses and hotels not constituting rooms or apartments designed for actual residence, and highways, streets, schools, places of amusement, parks, playgrounds, and premises used in connection with public passenger transportation or any property owned by the CNMI or Department of Public Lands (DPL).

(ss) “Sale” or “sold” means:

(1) Any transfer, exchange, or barter, in any manner or by any means, for a consideration, and includes and means all sales made by any person. It includes a gift by a person engaged in the business of selling marijuana, for advertising, as a means of evading this chapter, or for any other purpose.

(2) If a marijuana producer also holds one or more processor licenses, one or more wholesale licenses, one or more marijuana lounge licenses, or one or more retail licenses, a sale of marijuana flowers, marijuana leaves, or immature marijuana plants will be deemed to occur if and when the marijuana producer processes or takes any other action with respect to such marijuana flowers, marijuana leaves, or immature marijuana plants for which a processor license, wholesale license, marijuana lounge license, or retail license is required, regardless of whether the marijuana producer continues to own or possess the marijuana flowers, marijuana leaves, or immature marijuana plants.

(tt) “Single Serving” of marijuana is defined as containing 10 mg of delta-9 tetrahydrocannabinol

(uu) (1) “Useable marijuana” means the dried leaves and flowers of marijuana.

(2) “Useable marijuana” does not include:

(i) Marijuana seeds;

(ii) The stalks and roots of marijuana; or

(iii) Waste material that is by-product of producing or processing marijuana.

§ 180-10.1-050 Further Definitions. [RESERVED]

PART 100. CNMI CANNABIS COMMISSION: ORGANIZATION AND ADMINISTRATION

§ 180-10.1-101 CNMI CANNABIS COMMISSION

§ 180-10.1-105 Powers and Duties

§ 180-10.1-110 Commissioners

§ 180-10.1-115 Limitations on Powers

§ 180-10.1-120 Managing Director

§ 180-10.1-125 Delegation of Officers

§ 180-10.1-130 Commission Meetings

- § 180-10.1-135 Resolutions and Minutes
- § 180-10.1-140 Appearances
- § 180-10.1-145 Recessed meetings
- § 180-10.1-150 Investigative Hearings
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- § 180-10.1-165 Subpoenas
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PART 100. CNMI CANNABIS COMMISSION: ORGANIZATION AND ADMINISTRATION

§ 180-10.1-101 CNMI CANNABIS COMMISSION:

- (a) Commonwealth of the Northern Mariana Islands (CNMI) Cannabis Commission herein thereafter referred to as “The Commission.”
- (b) The Commission was established pursuant to Public Law 20-66, and as amended in Public Law 21-5, herein thereafter referred to as “The Act.”

§ 180-10.1-105 Powers and Duties. The Commission shall have all the powers and authority necessary to carry out the purposes of The Act, including, without limitation, the responsibility:

- a) To conduct hearings pertaining to the violation of the Act or regulations promulgated thereto; including hearings for the purpose of approving marijuana or hemp licenses and other business allowed under the Act.
- b) To promulgate such rules and regulations, as may be necessary to fulfill the intent, policies and purposes of this chapter. The Commission may use such rules and regulations to interpret, enlarge upon, except provisions defining the authority and powers of the Commission, or define, or any provision of this chapter to the extent that such provision is not specifically defined by the Act. The rules and regulations, at a minimum, provide for the following:
 1. A code of ethics for the members of the Commission and its officers and employees.
 2. Supervision, monitoring and investigation or other means to ensure suitability and compliance with the legal, statutory and contractual obligations of owners, operators, and employees of the marijuana or hemp businesses and other persons licensed under this title.
 3. The examination, supervision and monitoring of the continuing fiscal and financial capability and transactions of marijuana or hemp business owners, operators, concessionaires and other parties with any direct relation to the marijuana or hemp business operators and to protect the public in the event that such capability is significantly diminished.
 4. To collaborate in the definition, coordination and execution of the social, environmental and economic policies for the operations of the marijuana and hemp businesses.
 5. To authorize and certify all the equipment, facilities, and tools or utensils used by the operations of marijuana or hemp businesses.

6. To issue licenses for marijuana and hemp businesses and other authorized activities under the Act.
 7. To examine, supervise and monitor the eligibility of all authorized and licensed marijuana and hemp businesses or activities authorized under this title; including their partners and principal employees.
 8. To investigate and penalize any administrative infractions practiced according to the appropriate substantial and procedural legislations.
 9. To ensure that the relationship of the licenses marijuana and hemp businesses and individuals or entities authorized for personal or medicinal use of marijuana with the government and the public is in compliance with the Commission's regulations and provides the highest interest to the CNMI.
 10. The exclusion and removal of undesirable persons from the marijuana and hemp businesses
 11. Civil penalties for the violation of provisions or regulations imposed under The Act.
 12. Penalties for the late payment of applicable fines, or fees.
- c) To levy fines and penalties for the violation of provisions of The Act and the regulation promulgated by the Commission.
 - d) To require and demand access to and inspect, examine, photocopy, and audit all papers, books and records of the license marijuana and hemp businesses on its premises or elsewhere as practical, including inspecting the gross income produced by the marijuana and hemp businesses and verification of their income, and all other matters affecting the enforcement of the Commission's policy or as required pursuant to The Act.
 - e) For the types of licenses or permits to be covered by the marijuana and hemp license and their structure.
 - f) The Commission shall regulate fees.
 - g) To regulate the purchase, sale, production, processing, transportation, and delivery of marijuana items in accordance with the provisions of the Act.
 - h) To grant, refuse, suspend or cancel licenses for the sale, processing, or production of marijuana items, or other licenses in regard to marijuana items, and to permit, in its discretion, the transfer of a license of any person.
 - i) To investigate and aid in the prosecution of every violation of CNMI statutes relating to marijuana items, and cooperating in the prosecution of offenders before the Superior Court for the CNMI.
 - j) To adopt such regulations as necessary and feasible for carrying out the intent and provisions of The Act and to amend or repeal such regulations. When such regulations are adopted they shall have the full force and effect of law.
 - k) To exercise all powers incidental, convenient or necessary to enable it to administer or carry out any of the provisions of The Act.
 - l) To regulate and prohibit any advertising by manufacturers, processors, wholesalers or retailers of marijuana items by the medium of newspapers, letters, billboards, radio, online social media platforms, or otherwise.
 - m) To regulate the use of marijuana items for scientific, pharmaceutical, manufacturing, mechanical, industrial and other purposes.
 - n) To adopt separate regulations as are necessary and feasible for the development of a medical marijuana program.

- o) To adopt separate regulations as are necessary and feasible for the development of a hemp program for strains of cannabis that do not exceed three tenths percent (0.3%) on a dry weight basis of any part of the plant cannabis, or per volume or weight of marijuana product, or the combined percent of delta-9-tetrahydrocannabinol and tetrahydrocannabinolic acid in any part of the plant cannabis regardless of moisture content.
- p) To conduct an annual summit with the Commonwealth Healthcare Corporation, the Department of Public Safety, the Department of Lands and Natural Resources and other stakeholders in the government and private sectors to discuss the regulation of cannabis in the Commonwealth.
- q) Develop an educational curriculum piece for Homegrown Registry applicants to enroll in prior to issuance of licenses by the Commission.
- r) Update such curriculum as necessary to meet with population demands.
- s) Monitor and study federal laws, regulations and policies regarding cannabis
- t) Determine if the limitation of licenses is necessary for the viability of the industry.

§ 180-10.1-110 Commissioners. Pursuant to The Act, the composition of the Commission will be as follows:

- a) The Commission is an autonomous public agency of the government of the Commonwealth of the Northern Mariana Islands and shall consist of five (5) Commissioners:
 1. The Governor shall appoint from the Third Senatorial District three (3) members to the Commission, subject to the advice and consent of the Saipan and Northern Islands Legislative Delegation, provided that one of the three members appointed by the Governor shall be a voter from the Northern Islands and selected by the Northern Islands' mayor.
 2. The Mayor of Rota shall appoint from the First Senatorial District one (1) member to the Commission, subject to the advice and consent of the Rota Legislative Delegation.
 3. The Mayor of Tinian shall appoint from the Second Senatorial District one (1) member to the Commission, subject to the advice and consent of the Tinian and Aguiguan Legislative Delegation.

(b) Terms of Office

1. Each member shall serve for a term of four (4) years, except that of the members first appointed, two (2) shall serve a term of two (2) years, and three (3) shall serve a term of four (4) years, however, each member shall serve no more than two (2) terms.
2. A term of a member is defined as the time a member serves as a Commissioner regardless of duration.
3. The Terms of all the members first appointed shall begin from September 12, 2019, regardless of the actual date of appointment.
4. Any vacancy shall be filled in the same manner as the original appointment and for the unexpired term thereof.
5. A member removed from the Commission for cause shall not be re-appointed to the Commission.

(c) Removal of a Commissioner: For Cause Only

1. The Governor may, for cause only, suspend or remove any Commission member, without regard to who appointed said member, subject to judicial review by the Superior Court, which may stay such removal or suspension pending such review.
2. Membership on the Commission shall be automatically forfeited upon violation of subsection (e) of Article V, upon conviction of a felony, or upon conviction of any crime or offense involving moral turpitude.
3. The Commission shall not be considered an agency of the local government for purposes of Article VI, Section 8, of the Constitution.

(d) Members of the Commission shall each be compensated pursuant to law.

(e) The members of the Commission are not employees of the Commission or the CNMI government.

(f) The minimum number of members needed to constitute a quorum for the conduct of Commission business shall be three (3) members; provided at least one member of the Senatorial District of Tinian or Rota is counted in the quorum. A member who appears at a meeting telephonically or via videoconference shall be deemed present to constitute a quorum.

§ 180-10.1-115 Limitations on Powers. The Commission itself has no power to purchase, own, sell, or possess any marijuana items.

§ 180-10.1-120 Managing Director. The Commission shall hire a Managing Director who will be responsible for the overall administration of the Commission and the supervision of the marijuana and hemp licensees and others pursuant to the Act.

a) Qualifications of the Managing Director

The Managing Director shall possess the following minimum qualifications:

1. A bachelor's degree from a United States accredited educational institution; and
 2. Five years' work experience in professional, administrative, or management in government or private sectors; and
 3. Good ethical and moral character; and
 4. The Commission shall not hire any person for the Managing Director's position who has been convicted of a crime in any jurisdiction of the United States, or any foreign country carrying a minimum sentence of imprisonment of more than six months, excepting traffic offenses.
 5. The Managing Director shall not have any interest, directly or indirectly, in any business under the jurisdiction of the Commission.
- b) The Managing Director shall be the head of the administration of the Commission, and subject to the general oversight and direction of the Commission, shall organize the work of the Commission in a manner that will ensure its efficient and effective operation and, subject to the budgetary authority, the Managing Director may hire and terminate such staff necessary to carry out the purpose of the Commission. Such staff shall be exempt from the civil service. The Managing Director shall obtain such equipment, rent or build such additional office space, and generally make such regular office expenditure and

acquisitions as necessary to establish and maintain a working office suitable for the Commission to effectively function pursuant to the Act.

- c) The Managing Director shall have such other duties as may be assigned or delegated by the Commission.
- d) The Managing Director serves at the pleasure of the Commission.
- e) The Managing Director's annual salary shall be established by the Commission, not to exceed seventy thousand dollars (\$70,000.00) per year.
- f) The Managing Director shall be reimbursed for actual, necessary, and reasonable expenses incurred in the performance of his or her duties as allowed by the Commission, but in event not to exceed Twenty-Five Thousand Dollars (\$25,000.00) in reimbursements per calendar year. All travel will be subject to 1 CMC § 7407.

§ 180-10.1-125 Delegation of Officers.

a) Delegation to Chair

- 1. The Commission hereby delegates to the Chairman the authority to issue preliminary rulings on scheduling, procedural, and evidentiary matters, and other matters provided by these Regulations, that may be presented to the Commission during the course of conducting a meeting, or that may arise when the Commission is not meeting.
- 2. The Commission may, upon a majority vote in a specific case, temporarily abrogate the general delegation granted pursuant to subsection (a) of this section.
- 3. Any specific ruling or decision of the Chairman pursuant to subsection (a) of this section is subject to consideration by the entire Commission upon request of any Commissioner, or upon timely motion of a person affected by the ruling or decision.
- 4. The Commission shall be deemed to have ratified an action of the Chairman taken pursuant to subsection (a), under the following circumstances:
 - i. If the Chairman's action occurred at the time other than during a meeting, the Chairman's action is ratified if the Commission does not overturn or address the action at that meeting.
 - ii. If the Chairman's action occurred at a time other than during a meeting, if the Commission does not overturn or address the Chairman's action at the next meeting concerning that particular matter.
- 5. The Chairman may sign all orders on behalf of the Commission.
- 6. Where the Commission is a party to civil litigation, the Chairman may give guidance regarding the course of the litigation to the attorney for the Commonwealth.
- 7. The Chair will preside over CCC meetings. In case of a scheduled absence of both the Chair and Vice-chair, the Chair will select another member to preside over that upcoming meeting.
- 8. The Chair will be the Expenditure Authority for the Commission and may delegate this authority as necessary.

(b) Delegation to Vice-chair

1. The Vice-chair has all the rights, duties and responsibilities of a regular Commissioner, including the right to introduce motions and proposals, as well as to speak and vote on issues before the board.
2. The Vice-chair will act for the Chair in the Chair's absence.
3. The Vice-chair will assist the Chair in performing Commission duties as delegated by the Chair.

(c) Delegation to Treasurer. The Treasurer of the Commission has primary responsibility for the financial well-being of the corporation but does not take day-to-day responsibility, included in the board treasurer's duties are:

1. Creates and maintains the Commission's annual budget for each fiscal (financial) year. This responsibility includes presenting the budget to the Commission for approval.
2. Creates, implements and reviews financial policies for the Commission.
3. Reviews the investment activities of the Commission.
4. Oversees the annual financial audit of the Commission (if public) and other audits of Commission records and finances.
5. Chairs the Board's Finance Committee.
6. Represents Commission on legislative meetings involving budgetary appropriations.

(d) Delegation to Secretary

1. Records minutes and circulates to commissioners for review; all minutes should be provided to commission members prior to commission's next meeting in preparation for adoption on subsequent agenda.
2. Stores all pertinent meeting minutes for shared access by all commissioners; this information should be readily available for the Commission to review at any time.
3. Solicits meeting agendas for draft review by the Commission and garners final approval by Chairperson for circulation to the rest of the Commission.
4. Keeps all records in a safe place for sharing with commissioners or in preparation of audits, if needed.

§ 180-10.1-130 Commission Meetings

- a) Regular meetings of the Commission shall be held at least once per month in the CNMI, on such dates and at such times as the Commission shall establish. All public meetings must conform to the Open Government Act as stated on 1 CMC Section 9901.
- b) Special meetings of the Commission will be held from time to time on such dates and at such times and places as the Commission may deem convenient.
- c) Except as otherwise specifically provided by these regulations, any member of the Commission may place an item on a Commission agenda for consideration by the entire Commission.
- d) The Chairman may alter the order in which matters on the Commission agenda are heard.
- e) Requests for special meetings will be granted only upon a showing of exceptional circumstances. The Commission may require that a person requesting a special meeting pay the costs associated with such meeting, in addition to those costs usually assessed against an applicant.

- f) In the absence of incapacity of the Chairman, the Vice-chairman may call a special meeting. In the absence or incapacity of both, any two (2) members of the Commission may call a special meeting.
- g) Unless otherwise ordered by the Chairman, requests for continuances of any matter on the Commission agenda must be in writing, must set forth in detail the reasons a continuance is necessary, and must be received by the Secretary no later than two (2) calendar days before the meeting.
- h) Unless otherwise ordered by the Chairman, the original of any documentation supplementing an application as required by the Commission must be received by the Secretary no later than eight (8) calendar days before the meeting. Documentation not timely received will not be considered by the Commission unless the Commission, in its discretion, otherwise consents.
- i) The Chairman may defer to another meeting any matter with respect to which documentation has not been timely submitted. The applicant and its enrolled attorney or agent, if any, must appear at the meeting to which the matter is deferred, unless the Chairman waives their appearances.

§ 180-10.1-135 Resolutions and Minutes

- a) The records of the Commission shall include a minute book and a resolution book which may be stored electronically. The vote on any matter before the Commission shall be set forth in the minutes in substantial compliance with requirements of (b) below, unless the Chairman or the Commission determines otherwise. If the Commission determines to memorialize the vote on a particular matter by the preparation of a formal resolution, the resolution shall be prepared in substantial compliance with the requirements of (c) below and shall be recorded in the resolution book.
- b) Every vote of the Commission recorded in the minutes shall include the following information:
 - 1. The substance of the matter considered;
 - 2. The vote of the Commission, including the names of any Commissioner dissenting or abstaining;
 - 3. If appropriate, reference to the existence of a formal resolution concerning the matter; and
 - 4. Certification by the Secretary of the Commission.
- c) Every formal resolution of the Commission shall include the following information:
 - 1. A concise statement of the issues presented and the relevant procedural history;
 - 2. The statutory authority for the action taken;
 - 3. A precise statement of the action taken by the Commission, including any terms or conditions attached thereof; and
 - 4. Certification by the Secretary of the Commission.
- d) The failure to substantially comply with the requirements of (a), (b), or (c) above shall not invalidate the vote of the Commission.

§ 180-10.1-140 Appearances

- a) Except as provided in § 180-10.1-140(b) or unless an appearance is waived by the Chairman, all persons, and their enrolled attorneys and agents, if any, must appear at the Commission meeting at which their matter is to be heard. Requests for waivers of

appearances must be in writing, must be received by the Secretary no later than eight (8) business days before the meeting, and must explain in detail the reasons for requesting the waiver. If at the time of its meeting the Commission has any questions of an applicant who has been granted a waiver and is not present, the matter may be deferred to another meeting of the Commission.

- b) Unless the Commission otherwise instructs, the following persons, and their enrolled attorneys and agents, are hereby granted a waiver of appearance for the Commission meeting:
 - 1. Applicants who have received unanimous recommendation of approval from the Commission;
 - 2. Licensees and Commission counsel on stipulations between the licensees and the Commission, where the stipulations fully resolve petitions for redeterminations, claims for refunds or other issues.
 - 3. Where the Commission is to consider a stipulation between the Managing Director and a licensee settling a disciplinary action and revoking, suspending or conditioning a license, the licensee shall be prepared to respond on the record to questions regarding the terms of the stipulation and the licensee's voluntariness in entering into the stipulation

§ 180-10.1-145 Recessed meetings

- a) Any meeting of the Commission may be recessed to consider matters which were duly noticed as items on the agenda of that meeting and must not exceed a time period of more than 24 hours.
- b) Notice of a recessed meeting to consider matters which were duly noticed as items on the agenda may be given by announcement at the meeting, but where any other matters are to be considered at a recessed meeting, such matters must be duly noticed as required by these Regulations or as otherwise required by statute.

§ 180-10.1-150 Investigative Hearings. Investigative hearings may be conducted by one (1) or more members of the Commission with the concurrence of a majority of the Commission at such times and places, within the Commonwealth, as the member or members may deem convenient.

§ 180-10.1-155 Appointment of committees. The Chairman may at his or her discretion appoint committees to study and report to the Commission any matter appropriate to the Commission's administration of The Act or these regulations, subject to objection by majority vote by the Commission.

§ 180-10.1-160 Service of Notice in General

- a. Each licensee and applicant shall provide an electronic mail address to the Commission for the purposes of sending notices and other communications from the Commission. Each licensee and applicant shall update this electronic mail address immediately as often as it is otherwise necessary. The original provision and subsequent updates of electronic mail addresses shall be made to the Commission's custodian of records by means designated by the Chairman. The Applicant or Licensee is accountable for the monitoring and the function of their email addresses provided to the Commission.

- b. Except as otherwise provided by law or in these regulations, notices and other communications may be sent to an applicant or licensee by electronic mail at the electronic mail address of the establishment as provided to the Commission for the purpose of sending notices and other communications. Except as otherwise provided by law or in these regulations, notices and other communications sent by electronic mail shall satisfy any requirement to mail a notice or other communication.
- c. Notices shall be deemed to have been served on the date the Commission sent such notices to the electronic mail address provided to the Commission by a licensee or applicant, and the time specified in any such notice shall commence to run from the date of such mailing.
- d. Any applicant or licensee who desires to have notices or other communications mailed to a physical address shall file with the Commission a specific request for that purpose, and notices and other communications will, in such case, be sent to the applicant or licensee at such address, but the Commission may charge a fee therefore.
- e. An applicant or licensee will be addressed under the name or style designation in the application or license, and separate notices or communications will not be sent to individuals named in such application or license unless a specific request for that purpose is filed with the Commission. In the absence of such specific request, a notice addressed under the name or style designated in the application or license shall be deemed to be notice to all individuals named in such application or license.

§ 180-10.1-165 Subpoenas.

[RESERVED]

§ 180-10.1-170 Employment and termination of employees. The Managing Director shall be responsible for the employment and termination of Commission employees. Members of the Commission are responsible only for the employment of the Managing Director and shall not interfere with the Managing Director's employment decisions. The Managing Director shall create, and from time to time, update, an employee handbook or manual which reflect the Commission's personnel policies. At a minimum, the handbook or manual shall provide for the hiring, discipline (up to and including termination), and appeal processes governing employment with the Commission.

Part 200 INFORMATION AND FILINGS:

- § 180-10.1-201 Office Mailing Address and Hours
- § 180-10.1-205 Official Records; Fees for Copies
- § 180-10.1-210 Communications/Notices to Commission
- § 180-10.1-215 Public Information Office
- § 180-10.1-220 Filing of Petitions and Applications
- § 180-10.1-225 Petitions for Rulemaking

§ 180-10.1-201 Office Mailing Address and Hours. Office Mailing Address and Hours

The main mailing address of the Commission is:

CNMI Cannabis Commission
P.O. Box 500135
Saipan, MP 96950

The normal office hours of the Commission are:
8:00 am to 5:00 pm, Monday through Friday, unless otherwise authorized by the Commission.

The office of the Commission is closed to the public on legal holidays authorized by the CNMI government. The Commission may maintain work schedules for Commission employees during any hour of any day.

§ 180-10.1-205 Official Records; Fees for Copies

- a) No original official record of the Commission shall be released from the custody of the Commission unless upon the express direction of the Chairman or Managing Director or upon the order of a court of competent jurisdiction.
- b) Copies of the official records of the Commission which are required by law to be made available for public inspection will be made available during the hours provided for in Article XXVI, and upon the payment of appropriate fees.
- c) No person shall, directly or indirectly, procure or attempt to procure from the records of the Commission or from other sources, information of any kind which is not made available by proper authority.
- d) No application, petition, notice, report, document, or other paper will be accepted for filing by the Commission and no request for copies of any forms, pamphlets, records, documents, or other papers will be granted by the Commission, unless such papers or requests are accompanied by the required fees, charges, or deposits.
- e) The cost of copies of official records of the Commission which are required by law to be made available for public inspection where copies are provided shall be One Dollar (\$1.00) per page. Where copies are not provided, the cost for the mere inspection of documents is seventy cents (\$0.70) per minute of the Commission's legal counsel's time reviewing, redacting and copying the inspected documents.
- f) All payments of taxes, fees, deposits, and charges which are to be made to the Commonwealth Treasury shall be made by check payable to the order of the Commonwealth Treasurer and mailed to the Department of Finance with an original receipt delivered to the main office of the Commission or posted by certified mail to the mailing address of the Commission.
- g) The Commission may provide for payment by wire transfer.

§ 180-10.1-210 Communications/Notices to Commission

- a) Except as otherwise provided, all papers, process, or correspondence other than fees deposits or charges, relating to the Commission should be addressed to or served upon the Commonwealth Cannabis Commission main office.

- b) All such papers, process, or correspondence shall be deemed to have been received or served when delivered to the main office of the Commission but a Commissioner or such individual members of the Commission's staff as the Chairman may designate, may in his or her discretion receive papers or correspondence or accept service of process.

§ 180-10.1-215 Public Information Office. Requests for information regarding the Commission may be sent to:

CNMI Cannabis Commission
Attn: Managing Director
Caller Box 10007
Saipan, MP 96950

The official spokesperson for the Commission shall be the Chairperson, Managing Director or their designated appointee.

§ 180-10.1-220 Filing of Petitions and Applications. Petitions for formal action by the Commission shall be addressed to the Chairman of the Commission and should be certified mailed or delivered to:

CNMI Cannabis Commission
Attn: Chairman
Caller Box 10007
Saipan, MP 96950

§ 180-10.1-225 Petitions for Rulemaking

- a) Any interested person may file a petition with the Commission for the adoption, amendment, or repeal of any rule, pursuant to Commission regulation. Such petition shall be in writing, be signed by the petitioner, and include the following information:
 - 1. The name and address of the petitioner;
 - 2. The substance or nature of the requested rulemaking;
 - 3. The reasons for the request;
 - 4. The specific legal rights, duties, obligations, privileges, benefits, or other specific legal relations of the interested persons which are affected by the requested rulemaking; and
 - 5. Reference to the statutory authority under which the Commission may take the requested action; and
- b) A petition for rulemaking shall be scheduled for consideration at a public meeting of the Commission. The petitioner shall be given an opportunity to make a statement in support of the requested rulemaking.
- c) Within thirty (30) days of receipt of a petition which is in compliance with this section, the Commission shall mail to the petitioner a notice of action on the petition, which shall include the nature or substance of the Commission's action upon the petition and a brief statement of reasons for the Commission's actions.
- d) Commission action on a petition for rulemaking may include:
 - 1. Approval or denial of the petition;

2. Filing a notice of proposed rule; or
3. Referral of the matter for further deliberations, the nature of which will be specified, and which conclude upon a specified date. The results of these further deliberations shall be mailed to the petitioner.

Part 300 **LICENSE AND REGISTRATION REQUIREMENTS:**

- § 180-10.1-301 Receipt
- § 180-10.1-305 Filing
- § 180-10.1-310 Processing
- § 180-10.1-315 True name on application
- § 180-10.1-320 Fees
- § 180-10.1-325 Application Review
- § 180-10.1-330 Approval of Application and Issuance of License
- § 180-10.1-335 Denial of Application
- § 180-10.1-340 Public Inspection of Information
- § 180-10.1-345 Amendment
- § 180-10.1-350 Withdrawal
- § 180-10.1-355 Limitation on number of licenses

§ 180-10.1-301 Receipt. All application papers, unless otherwise directed by the Commission or these Regulations, shall initially be submitted to and received by the Managing Director, or such members of the Commission staff, or partnering government entities as the Managing Director may designate.

§ 180-10.1-305 Filing

- a) The Managing Director, or such members of the Commission staff as the Managing Director may designate, shall determine the date of filing as to each application received and shall issue cause to be endorsed thereon the date of such filing. No application shall deem filed until the applicant satisfies all appropriate requirements, to wit:
 1. That all papers presented conform to all requirements relating to format, signature, oath or affirmation, attorney certification, and copies;
 2. That all appropriate application, business entity disclosure forms, personal history disclosure forms, and supplemental to personal history disclosure forms have been properly completed and presented;
 3. That all required consents, waivers, photographs or handwriting exemplars have been properly presented;
 4. That all other information, documentation, assurances, and other materials required or requested at that preliminary stage pertaining to qualifications have been properly presented; and
 5. That all required fees have been properly paid and all required bonds have been properly furnished.

§ 180-10.1-310 Processing

- a) A person may submit an application to the Commission, on a form prescribed by the Commission, for a marijuana producer, processor, wholesaler, retail, lounge, research certificates, or laboratory license.
- b) An application for a license and all documentation required in the application instructions and in subsection §180-10.1-310(c) of this provision must be submitted in a manner specified by the Commission. The application fee specified in 4 CMC § 53036 must also be paid in a manner specified by the Commission.
- c) An individual or legal entity are applicants if any individual or legal entity that has an ownership interest in the business proposed to be licensed.
- d) If a legal entity is an applicant, the following individuals within a legal entity are also applicants:
 - 1. All general partners in a limited partnership;
 - 2. Limited partners whose investment commitment is ten percent or more of the total investment commitment;
 - 3. All members in a limited liability company or partnership whose investment commitment or membership interest is ten percent or more;
 - 4. All directors who own or control three percent or more of the voting stock
 - 5. Principal officers of corporate applicants and;
 - 6. All natural person stockholders owning or controlling ten percent or more of the voting stock of a corporate entity.
- e) Applicants must submit the following:
 - 1. Information for individual applicants and individuals within a legal entity who have been identified as applicants;
 - 2. Any forms required by the Commission and any information identified in the form that is required to be submitted;
 - 3. A map or sketch of the premises proposed for licensure, including the defined boundaries of the premises and the location of any primary residence located on the same lot as the licensed premises;
 - 4. A scaled floor or plot plan sketch of all enclosed areas with clear identification of walls, partitions, counters, windows, all areas of ingress and egress, and all limited access areas;
 - 5. Proof of right to occupy the premises proposed for licensure;
 - 6. An operating plan that demonstrates at a minimum, how the applicant's proposed premises and business will comply with the applicable laws and rules regarding:
 - i. Security;
 - ii. Employee qualifications and training;
 - iii. Transportation of product;
 - iv. Prevention of minors from entering the licensed premises;
 - v. Preventing minors from obtaining or attempting to obtain marijuana items; and
 - vi. Disposal of marijuana waste plan
 - 7. For producers:
 - i. The proposed canopy size and tier as described in 4 CMC § 53036 and a designation of the canopy area within the license premises.

- ii. A report describing the applicant's electricity and water usage, on a form prescribed by the Commission.
 - 1. For initial licensure and renewal, the report must describe the estimated electricity and water usage taking into account all portions of the premises and expected requirements of the operation for the next twelve months.
 - 2. In addition to requirements of §180-10.1-310(f)(7)(ii)(1), for renewal, the report must describe the actual electricity and water usage for the previous year taking into account all portions of the premises.
 - iii. A description of the growing operation including growing media, a description of equipment to be used in the production, and whether production will be indoor, outdoor or both.
 - iv. Proof of a legal source of water as evidenced by a statement that water is supplied from a public or private water provider.
8. For processors:
- i. On a form prescribed by the Commission, the proposed endorsements as described in these regulations.
 - ii. A description of the type of products to be processed, a description of equipment to be used, including any solvents, gases, chemicals or other compounds used to create extracts or concentrates.
9. For lounges:
- i. On form prescribed by the Commission, applicants shall submit in addition to the requirements under 180-10.1-310 (f)(1-6):
 - 1. A description or rendering of the interior design schematics;
 - 2. Hours of operation
 - ii. If the proposed lounge will be providing food intended to be consumed, the applicant shall submit the necessary permits from the CNMI Bureau of Environmental Health and must maintain compliance and good standing with the standards set by the Bureau of Environmental Health
- f) In addition to submitting the application form and the items described in §180-10.1-310 (e), the Commission may require the following to be submitted:
- i. Any forms required by the Commission and any information identified in the form that is required to be submitted.
 - ii. Any additional information if there is a reason to believe that the information is needed to determine the merits of the license application.
- g) The Commission must review an application to determine if it is complete. An application will be considered incomplete if an application form is not complete, the full application fee has not been paid, or some or all of the additional information required under these rules is not submitted.
- h) An applicant may submit a written request for reconsideration of a decision that an application is incomplete. Such request must be received by the Commission within ten (10) days of the date the incomplete notice was mailed to the applicant. The Commission shall give the applicants the opportunity to be heard if an application is rejected. A hearing under this subsection will be held within the standards set by Commission regulations.

- i) If, prior to an application being acted upon by the Commission, there is a change with regard to who is an applicant or who is a person with a financial interest in the proposed business, the new applicant or person with a financial interest must submit a form, prescribed by the Commission, that:
 - 1. Identified the individual or person;
 - 2. Describes the individual's or person's financial interest in the business proposed for licensure; and
 - 3. Includes any additional information required by the Commission, including but not limited to information required for a criminal background check.
- j) Failure to comply with §180-10.1-310 (j) may result in an application being denied.

§ 180-10.1-315 True name on application

- a) True name on application. An application for a license must specify the real and true names of all individuals and legal entities that have an ownership interest in the business proposed to be licensed by identifying all such persons and legal entities as applicants.
- b) License privileges. License privileges are available only to applicants identified in the application and their authorized representatives and only for the premises designated by the licenses.
- c) Ownership interest. The Commission may refuse to issue a license if the applicant is not the owner of the business proposed to be licensed, a person with an ownership interest is not identified as an applicant, or an undisclosed ownership interest exists. For the purposes of this provision, an "ownership interest, is indicated by the following behaviors, benefits or obligations:
 - a. Any person or legal entity, other than an employee acting under the direction of the owner, that exercises control over, or is entitled to exercise control over, the business;
 - b. Any person or legal entity, other than an employee acting under the direction of the owner, that incurs, or is entitled to incur, debt or similar obligations on behalf of the business;
 - c. Any person or legal entity, other than an employee acting under the direction of the owner, that enters into, or is entitled to enter into, a contract or similar obligations on behalf of the business; or
 - d. Any person or legal entity identified as the lessee of the premises proposed to be licensed.

§ 180-10.1-320 Fees

- a) If the Commission approves an application and grants an annual license, the following fees must be paid:
 - 1. Producers:
 - i. Micro Production
 - 1. \$250 Application Fee
 - 2. \$500 License Fee
 - ii. Class 1 – Less than 750 square feet under cultivation
 - 1. \$500 Application Fee
 - 2. \$1000 License Fee
 - iii. Class 2 – 750 to 2,999 square feet under cultivation

1. \$750 Application Fee
 2. \$3,700 License Fee
 - iv. Class 3 – 3,000 to 5,000 square feet under cultivation
 1. \$1,000 Application Fee
 2. \$6,500 License Fee
 2. Processor License
 - i. \$1,000 Application Fee
 - ii. \$4,500 License Fee
 3. Wholesale License
 - i. \$250 Application Fee
 - ii. \$2,000 License Fee
 4. Retail License
 - i. \$1,000 Application Fee
 - ii. \$6,000 License Fee
 5. Marijuana Lounge License
 - i. Class 1
 1. \$1,500 Application Fee
 2. \$5,000 License Fee
 - ii. Class 2
 1. \$1,500 Application Fee
 2. \$3,500 License Fee
 6. Marijuana Testing Facility License
 - i. \$1,500 Application Fee
 - ii. \$4,500 License Fee
 7. Transfer of Ownership
 - i. \$500 Application Fee
- b) If the Commission approves an application and grants a research certificate, the fee is \$4,000 for a three-year term with an application fee of \$500.
- c) Applicants must pay the non-refundable application fee at the time of license or certificate application renewal.
- d) If the Commission approves a renewal application the renewal license or certificate fees must be paid in the amounts specified in subsection (a)(1-6) of this provision.
- e) The Commission shall charge the following fees:
1. Transfer of location of premises review: \$1,000 per license
 2. Packaging preapproval: \$100
 3. Labeling preapproval: \$100
 4. Change to previously approved package or label: \$25

§ 180-10.1-325 Application Review

- a) Once the Commission has determined that an application is complete it must review the application to determine compliance with the Act and these regulations.
- b) The Commission:
- 1) Must, prior to acting on an application for a new license, a change to a larger producer canopy designation, a change to producer cultivation method designation or change in processor endorsement type, receive the appropriate zoning authorizations (if applicable) for the applicant’s proposed premises is located.

- 2) May, in its discretion, prior to acting on an application:
 - i) Contact any applicant or individual with a financial interest and request additional documentation or information; and
 - ii) Verify any information submitted by the applicant.
- c) The requirements of §180-10.1-325 (b)(1) of this rule do not apply to applicants for a producer license if the applicant demonstrates in a form and manner specified by the Commission that:
 - 1) The applicant is applying for a license at a location where a marijuana grow site registered under 4 CMC § 53021 is located; or
 - 2) The location is within the municipalities of Rota, or Tinian;
- d) The Commission must inspect the proposed premises prior to issuing a license.
- e) If during an inspection the Commission determines the applicant is not in compliance with these rules, the applicant will be provided with a notice of the failed inspection and the requirements that have not been met.
 - 1) An applicant that fails an inspection will have 15 calendar days from the date the notice was sent to submit a written response that demonstrates the deficiencies have been corrected.
 - 2) An applicant may request in writing one extension of the 15-day time limit in §180-10.1-325 (d)(1) of this provision, not to exceed 30 days.
- f) If an applicant does not submit a timely plan of correction or if the plan of correction does not correct the deficiencies in a manner that would bring the applicant into compliance, the Commission may deny the application.
- g) If the plan of correction appears, on its face, to correct the deficiencies, the Commission will schedule another inspection.
- h) If an applicant fails a second inspection, the Commission may deny the application unless the applicant shows good cause for the Commission to perform additional inspections.

§ 180-10.1-330 Approval of Application and Issuance of License

- a) If, after the application review and inspection, the Commission determines that an applicant is in compliance with these regulations the Commission must notify the applicant in writing that the application has been approved and after payment by the applicant of the license fee, provide the applicant with proof of licensure that includes a unique license number, the effective date of the license, date of expiration, and a description of premises for which the license was issued. If the applicant paid the license fee with a check the Commission will not issue a license until it has confirmation that the check has cleared.
- b) A licensee:
 - 1) May not operate until on or after the effective date of the license.
 - 2) Must display proof of licensure in a prominent place on the premises.
 - 3) May not use the Commission name or logo on any signs at the premises, on the business' website, or in any advertising or social media, except to the extent that information is contained on the proof of licensure or is contained in part of warnings, signage or other documents required by these rules.
- c) Licensure is only valid for the premises indicated on the license and is only issued to the individuals or entities listed on the application or subsequently approved by the Commission.

§ 180-10.1-335 Denial of Application

- a) The Commission must deny an initial or renewal application if:

1. An applicant is under the age of 21.
 2. The applicant's location is within an area that is determined to be prohibited in the applicable zone, if a zoning permit is required.
 3. The proposed licensed premises is located:
 - i. On federal property.
 - ii. CNMI Public Lands, with the exemption provided under 4 CMC § 53074
 - iii. At the same location or address, as a retail, processor or wholesale license, unless all of the licenses at the address or location are held or sought by identical applicants.
 - iv. The location proposed to be licensed is prohibited under 4 CMC § 53021.
 - v. The proposed licensed premises of a producer is located on the same lot, as a site registered with the Commission for the production of industrial hemp, unless the applicant submits and the Commission approves a control plan describing how the registered site will be separated from the premises proposed to be licensed and how the applicant will prevent transfer of industrial hemp to the licensed premises.
 - vi. The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.
 - vii. The proposed licensed premises of a retail applicant is located at the time the license is issued:
 1. Within 500 feet of:
 - a. A public or private school;
 - b. Any church, hospital, medical clinic;
 - c. Daycare center;
 - d. Youth center; or
 - e. In an area that is outside of the approved location for marijuana retail establishments.
 4. The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.
- b) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:
1. The applicant:
 - i. Has made false statements to the Commission.
 - ii. Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.
 - iii. Is not of good repute and moral character.
 - iv. Does not have a good record of compliance with this Act to, or these regulations, prior to or after licensure including but not limited to:
 1. The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of 4 CMC § 53046;
 2. Providing marijuana items to an individual without checking that the individual is 21 or older;
 3. Unlicensed transfer of marijuana items for financial consideration; or

4. Violations of Commonwealth law adopted, pending or adjudicated by the Commonwealth government
 - v. Does not have a good record of compliance with this Act or any regulations adopted thereunder.
 - vi. Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.
 - vii. Is unable to understand the laws of the Commonwealth relating to marijuana or these Regulations. Inability to understand laws and rules of the Commonwealth related to marijuana may be demonstrated by violations documented by the Commission.
2. Any individual listed on the application has been convicted of violating CNMI law or law of another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in 4 CMC § 53037(c).
 3. Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.
 4. The proposed licensed premises of a producer applicant is on the same lot, as another producer licensee under common ownership.
 - i. For the purpose of this, a cultivation lot is defined as a unit of land that can be legally described by metes and bounds.
 5. The proposed licensed premises of a producer applicant is on the same lot, as another producer licensee under diverse ownership if the Commission reasonably believes that the presence of multiple producers on the same lot creates a compliance risk or other risk to public health and safety.
- c) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee.
- d) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.
- e) A notice of denial must be issued in accordance with § 180-10.1-160.
- f) Notwithstanding § 180-10.1-335(b), in determining whether the Commission may refuse to license an applicant, the Commission may not consider the prior conviction of the applicant or any owner, director, officer, manager, employee, agent, or other representative of the applicant for:
1. (1) The manufacture of marijuana, if:
 - i. The date of the conviction is more than ten years before the date of the application; and
 - ii. The person has not been convicted more than once for the manufacture or delivery of marijuana;
 2. The delivery of marijuana to a person 21 years of age or older, if:

- i. The date of the conviction is more than ten years before the date of the application; and
 - ii. The person has not been convicted more than once for the manufacture or delivery of marijuana; or
3. The possession of marijuana.

§ 180-10.1-340 Public Inspection of Information. No information in the possession of the Commission relating to any application shall be made available for public inspection prior to the time that the said application shall be accepted for filing and docketed in accordance with the rules and regulations. Thereafter, the Commission may release information to the public on its own initiative or upon proper request as may be required by law.

§ 180-10.1-345 Amendment. It shall be the duty of each applicant to promptly file with the Commission, or such members of the Commission staff as the Managing Director shall designate, a written amendment to the application explaining any changed facts or circumstances whenever any material or significant change of facts or circumstances shall occur with respect to any matter set forth in the application or other papers relating thereto. Any applicant may be permitted by the Managing Director or designee to file any other amendment to the application at any time prior to final action made by the Commission.

§ 180-10.1-350 Withdrawal

- a) Except as otherwise provided in § 180-10.1-350 (b), a written notice of withdrawal of application may be filed by any applicant at any time prior to final Commission action. No application shall be permitted to be withdrawn, however, unless the applicant shall have first established to the satisfaction of the Commission that withdrawal of the application would be consistent with the public interest and policies of the Act. Unless the Commission shall otherwise direct, no fee or other payment relating to any application shall become refundable in whole or in part by reason of withdrawal of the application. The Commission shall not direct the refunding, in whole or in part, of any fee or other payment relating to any application unless the Commission determines that the refunding of the fee is in the best interest of the Commonwealth.
- b) Where a hearing on an application has been requested by a party or directed by the Commission, the Commission shall not permit withdrawal of said application after:
 1. The application matter has been assigned to any other hearing examiner authorized by law or these Regulations to hear such matter; or
 2. The Commission has made a determination to hear the application matter directly.
 3. Notwithstanding the foregoing, the Commission may accept and consider written notice of withdrawal after the time specified herein if extraordinary circumstances so warrant.

§ 180-10.1-355 Limitation on number of licenses. By resolution of the Commission, the number of available licenses may be limited. Once the number of approved licenses is reached, the Commission shall not receive additional applications until such time limitations are increased or removed.

§ 180-10.1-401 Financial and Business Records

§ 180-10.1-405 Licensee Responsibility

§ 180-10.1-410 Licensee Prohibitions

§ 180-10.1-401 Financial and Business Records. In addition to any other recordkeeping requirements in these rules, a licensee must have and maintain records that clearly reflect all financial transactions and the financial condition of the business. The following records may be kept in either paper or electronic form and must be maintained for a three-year period and must be made available for inspection if requested by an employee of the Commission:

- a) Purchase invoices and supporting documents for items and services purchased for use in the production, processing, research, testing and sale of marijuana items that include from whom the items were purchased and the date of purchase;
- a) Bank statements for any accounts relating to the licensed business;
- b) Accounting and tax records related to the licensed business;
- c) Audited Financial Statements
- d) Documentation of all financial transactions related to the licensed business, including contracts and agreements for services performed or received that relate to the licensed business; and
- e) All employee records, including training.

§ 180-10.1-405 Licensee Responsibility. A licensee is responsible for:

- a) The violation of any administrative rule of the Commission; any provision of affecting the licensee's license privileges.
- b) Any act or omission of a licensee representative in violation of any administrative rule of the Commission or any provision of the regulations or Commonwealth law affecting the licensee's license privileges.

§ 180-10.1-410 Licensee Prohibitions

- a) A licensee may not:
 1. Import into the Commonwealth or export from the Commonwealth any marijuana items unless permitted by the Commission;
 2. Give marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or game of skill, or competition of any kind;
 3. Sell, give or otherwise make available any marijuana items to any person who is visibly intoxicated;
 4. Make false representations or statements to the Commission in order to induce or prevent action by the Commission;
 5. Maintain a noisy, disorderly or unsanitary establishment or supply adulterated marijuana items;
 6. Misrepresent any marijuana item to a customer or to the public;
 7. Sell any marijuana item through a drive-up window;

8. Deliver marijuana to any consumer off the licensed premises except as permitted by [the provision regarding the delivery of marijuana items by retailers];
 9. Sell or offer to sell a marijuana item that does not comply with the minimum standards prescribed by the laws of the Commonwealth; or
 10. Use or allow the use of a mark or label on the container of a marijuana item that is kept for sale if the container does not precisely and clearly indicate the nature of the container's contents or in any way might deceive a customer as to the nature, composition, quantity, age or quality of the marijuana item.
 11. Sell any marijuana items during elections.
 12. Sell a whole marijuana plant [Addition]
- b) No licensee or licensee representative may be under the influence of intoxicants while on duty.
1. For purposes of this rule "on duty" means:
 - i. The beginning of a work shift that involves the handling or sale of marijuana items, checking identification or controlling conduct on the licensed premises, to the end of the shift including all breaks;
 - ii. For an individual working outside a scheduled work shift, the performance of acts on behalf of the licensee that involve the handling or sale of marijuana items, checking identification or controlling conduct on the licensed premises, if the individual has the authority to put himself or herself on duty; or
 - iii. A work shift that includes supervising those who handle or sell marijuana items, check identification or control the licensed premises.
 - iv. Whether a person is paid or scheduled for work is not determinative of whether the person is considered "on duty" under this subsection

Part 500

LICENSE PREMISES

§ 180-10.1-501 Licensed Premises Restrictions and Requirement

§ 180-10.1-505 Signage

§ 180-10.1-501 Licensed Premises Restrictions and Requirement.

- a) A licensed premises may not be located:
 1. On federal property; or
 2. CNMI Public Lands, with the exemption provided under 4 CMC § 53074
- b) The licensed premises of a producer applicant may not be on:
 1. Public land, with the exemption provided under 4 CMC § 53074; or
 2. The same lot as another producer licensee under common ownership.
- c) The licensed premises of a retailer may not be located:
 1. Within 500 feet of:
 - i. A public or private school;
 - ii. Any church, hospital, medical clinic;
 - iii. Daycare center;

- iv. Youth center; or
 - v. In an area that is outside of the approved location for marijuana retail establishments.
- d) The licensed premises of a processor who has an endorsement to process extracts may not be located in an area that is zoned exclusively for residential use.
 - e) The licensed premises of a processor, wholesaler, laboratory, research certificate holder, and retailer must be enclosed on all sides by permanent walls and doors.
 - f) A licensee may not permit:
 - 1. Any minor on a licensed premises except as described in § 180-10.1-501 (g) and (h); or
 - 2. On-site consumption of a marijuana item, by any individual, except if the premises is licensed under 4 CMC § 53026.
 - g) Notwithstanding § 180-10.1-501 (f)(1), a minor, other than a licensee's employee, who has a legitimate business purpose for being on the licensed premises, may be on the premises for a limited period of time in order to accomplish the legitimate business purpose. For example, a minor plumber may be on the premises in order to make a repair.
 - h) Notwithstanding § 180-10.1-501 (f)(1), a minor who resides on the lot where a marijuana producer is licensed may be present on those portions of a producer's licensed premises that do not contain usable marijuana or cut and drying marijuana plants or have marijuana items in view or accessible range of the minor.
 - i) A licensee must clearly identify all limited access areas in accordance with § 180-10.1-501 (e)
 - j) All employees, contractors and licensee representatives present on the licensed premises must wear clothing or a badge issued by the licensee that easily identifies the individual as an employee, contractor or licensee representative.
 - 1. A licensee must record the name of every current employee and licensee representative.
 - 2. The licensee must record the name and date of birth for that individual.
 - k) The general public is not permitted in limited access areas on a licensed premises, except for the consumer sales area of a retailer and as provided by § 180-10.1-501 (n). In addition to licensee representatives, the following visitors are permitted to be present in limited access areas on a licensed premises, subject to the requirements in § 180-10.1-501 (l) and (m):
 - 1. Laboratory personnel, if the laboratory is licensed by the Commission;
 - 2. A contractor, vendor or service provider authorized by a licensee representative to be on the licensed premises;
 - 3. Another licensee or that licensee's representative;
 - 4. Invited guests subject to requirements of § 180-10.1-501 (l); or
 - 5. Tour groups as permitted under § 180-10.1-501 (n) .
 - l) Prior to entering a licensed premises all visitors permitted by § 180-10.1-501 (k) must be documented and issued a visitor identification badge from a licensee representative that must remain visible while on the licensed premises. A visitor badge is not required for government officials. All visitors described in § 180-10.1-501 (k) must be accompanied by a licensee representative at all times.
 - m) A licensee must maintain a log of all visitor activity allowed under § 180-10.1-501 (k). The log must contain the first and last name and date of birth of every visitor and the date

they visited. A licensee is not required to record the date of birth for government officials.

- n) A marijuana producer or research certificate holder may offer tours of the licensed premises, including limited access areas, to the general public if the licensee submits a control plan in writing and the plan is approved by the Commission.
 - 1. The plan must describe how conduct of the individuals on the tour will be monitored, how access to usable marijuana will be limited, and what steps the licensee will take to ensure that no minors are permitted on the licensed premises.
 - 2. The Commission may withdraw approval of the control plan if the Commission finds there is poor compliance with the plan. Poor compliance may be indicated by, for example, individuals on the tour not being adequately supervised, an individual on the tour obtaining a marijuana item while on the tour, a minor being part of a tour, or the tours creating a public nuisance.
- o) Nothing in this rule is intended to prevent or prohibit Commission employees or contractors, or other government officials that have jurisdiction over some aspect of the licensed premises or licensee from being on the licensed premises.
- p) A licensee may not sublet any portion of a licensed premises unless approved by the Commission.
- q) A licensed premises may receive marijuana items only from a marijuana producer, marijuana processor, or marijuana wholesaler for whom a premises has been licensed by the Commission or as otherwise provided by these regulations.
- r) Notwithstanding § 180-10.1-501 (f)(1) of this rule, a minor may pass through the licensed area of an outdoor producer in order to reach an unlicensed area, so long as the minor does not have access to areas that contain marijuana items.

§ 180-10.1-505 Signage

- a) A licensee must post:
 - 1. At every licensed premises signs that read:
 - i. “No Minors Permitted Anywhere on This Premises”; and
 - ii. “No On-Site Consumption of Marijuana” if the location is not licensed under 4 CMC § 53026 [lounge area]; and
 - 2. At all areas of ingress or egress to a limited access area a sign that reads: “Do Not Enter – Limited Access Area – Access Limited to Licensed Personnel and Escorted Visitors.”
- b) All signs required by § 180-10.1-505 (a) must be:
 - 1. Legible, not less than 12 inches wide and 12 inches long, composed of letters not less than one-half inch in height;
 - 2. In English; and
 - 3. Posted in a conspicuous location where the signs can be easily read by individuals on the license premises

Part 600

MARIJUANA PRODUCERS

§ 180-10.1-601 Privileges; Prohibitions

§ 180-10.1-605 Operating Procedures

§ 180-10.1-610 Start-up Inventory

§ 180-10.1-615 Micro Producers

§ 180-10.1-620 Record Keeping

§ 180-10.1-601 Privileges; Prohibitions

- a) A producer may:
1. Plant, cultivate, grow, harvest and dry marijuana in the manner approved by the Commission and consistent with 4 CMC § 53022 and these regulations;
 2. Engage in indoor or outdoor production of marijuana, or a combination of the two;
 3. Sell or transport:
 - i. Usable marijuana to the licensed premises of a marijuana processor, wholesaler, retailer, marijuana lounge, laboratory, or research certificate holder;
 - ii. Whole, non-living marijuana plants that have been entirely removed from any growing medium to the licensed premises of a marijuana processor, wholesaler, , or research certificate holder;
 - iii. Immature marijuana plants and seeds to the licensed premises of a marijuana producer, wholesaler, retailer or research certificate holder;
 - iv. Marijuana waste to a producer, processor, wholesaler, or research certificate holder, an approved waste disposal service.
 4. Purchase and receive:
 - i. Immature marijuana plants and seeds from a producer, wholesaler, or research certificate holder;
 - ii. Marijuana waste from a producer, processor, wholesaler, retailer, laboratory, or research certificate holder; and
 5. Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these rules.
- b) A producer may not sell, deliver, purchase, or receive any marijuana item other than as provided in § 180-10.1-601 (a).

§ 180-10.1-605 Operating Procedures

- a) A producer must:
1. Establish written standard operating procedures for the production of marijuana. The standard operating procedures must, at a minimum, include when, and the manner in which, all pesticide and or other chemicals are to be applied during the production process; and
 2. Maintain a copy of all standard operating procedures on the licensed premises.
- b) If a producer makes a material change to its standard operating procedures it must document the change and revise its standard operating procedures accordingly. Records detailing the material change must be maintained on the licensed premises by the producer.

§ 180-10.1-610 Start-up Inventory

- a) Marijuana producers may not receive immature marijuana plants or seeds from any source other than from another licensee, except:

1. Between January 1, 2021 and January 1, 2022, a marijuana producer may receive immature marijuana plants and seeds from any source within the Commonwealth for up to one year following initial licensure by the Commission;
- b) The marijuana producer shall report receipt of the number of immature marijuana plants or seeds received under this section within 24 hours of the plants or seeds arriving at the licensed premises. A producer does not have to document the source of the immature plants or seeds during the one-year start-up period.
- c) Failure to comply with this rule is a violation and could result in license revocation.

§ 180-10.1-615 Micro Producers

- a) A micro producer may:
 1. Possess no more than twenty-five (25) mature marijuana plants;
 2. Harvest and dry marijuana in the manner approved by the Commission and consistent with 4 CMC § 53022 and these regulations;
 3. Engage in indoor or outdoor production of marijuana, or a combination of the two if the micro producer has entered into an agreement with a licensed marijuana wholesaler;
 4. Sell or transport:
 - i. Usable marijuana to the licensed premises of a licensed wholesaler in which the micro producer has an existing and valid agreement;
 - ii. Whole, non-living marijuana plants that have been entirely removed from any growing medium to the licensed premises of a marijuana wholesaler in which the micro producer has an existing and valid agreement;
 - iii. Marijuana waste to a producer, processor, wholesaler, or research certificate holder, an approved waste disposal service.
 5. Purchase and receive:
 - i. Immature marijuana plants and seeds from a producer, wholesaler, or research certificate holder;
 - ii. Marijuana waste from a producer, processor, wholesaler, retailer, laboratory, or research certificate holder; and
 6. Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these rules.
- b) A micro producer may not sell, deliver, purchase, or receive any marijuana item other than as provided in § 180-10.1-615 (a).
- c) Valid agreements between micro producers and wholesaler must contain:
 1. the type of marijuana item to be produced by the micro producer;
 2. the location and license information of the wholesaler; and
 3. terms in which the wholesaler will purchase marijuana items from the micro producer
- d) Micro producers must adhere to the requirements listed in § 180-10.1-610.

§ 180-10.1-620 Record Keeping. Every marijuana producer shall keep a complete and accurate record of all sales of marijuana flowers, marijuana leaves, and immature marijuana plants, and a complete and accurate record of the number of ounces of marijuana flowers produced, the

number of ounces of marijuana leaves produced, the number of immature marijuana plants produced, and the dates of production. The producers shall submit a report to the Commission on the last Wednesday of each month reporting the total quantity of marijuana items sold, the date of sale, the type of marijuana product, the purchaser of the product, a copy of the transaction invoice, and the total cost of the sale.

Part 700

MARIJUANA RETAILERS

§ 180-10.1-701 Retailer Privileges; Prohibitions

§ 180-10.1-705 Retailer Operational Requirements

§ 180-10.1-710 Retailer Premises

§ 180-10.1-701 Retailer Privileges; Prohibitions

a) A retailer may:

1. Between the hours of 7:00 AM and 10:00 PM local time, sell marijuana items from the licensed premises to a consumer 21 years of age or older;
2. Sell:
 - i. Marijuana items to a consumer 21 years of age or older within a licensed premises.
 - ii. Marijuana waste to a producer, processor, wholesaler, or research certificate holder.
 - iii. Returned marijuana items to a producer, processor or wholesaler who transferred the item to the retailer.
3. Deliver:
 - i. Marijuana waste to a producer, processor, wholesaler, or research certificate holder.
 - ii. Returned marijuana items to a producer, processor or wholesaler who transferred the item to the retailer.
4. Purchase and receive:
 - i. Usable marijuana, immature marijuana plants, and seeds from a producer or from a research certificate holder;
 - ii. Cannabinoid concentrates, extracts, and products from a processor or from a research certificate holder;
 - iii. Any marijuana item, except for whole, non-living marijuana plants, from a wholesaler; and
 - iv. Any marijuana item from a laboratory.
5. Refuse to sell marijuana items to a consumer;
6. Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these regulations;
7. Accept returned marijuana items that the retailer sold to a consumer and provide a refund or exchange with a product of equal or lesser value;

8. Sell marijuana items that have not been tested in a marijuana testing facility so long as the marijuana item marks or labels the product with a disclaimer that clearly reads “UNTESTED PRODUCT”; and
9. May sell immature marijuana plants and seeds to consumers, provided that the consumer presents valid homegrown marijuana registry information as determined by the Commission, and that the retailer maintains adequate records of sale.

b) A retailer may not:

1. Sell more than the following amounts to an individual at any [*one time transaction*]:
 - i. 1 ounce of usable marijuana to recreational consumers;
 - ii. 16 ounces of a cannabinoid product in solid form;
 - iii. 72 ounces of a cannabinoid product in liquid form;
 - iv. Five grams of cannabinoid extracts or concentrates, whether sold alone or contained in an inhalant delivery system; and
 - v. Ten marijuana seeds.
2. Sell more than six immature marijuana plants to a single Homegrown Registry permit holder within a 90-day period.
3. Provide free marijuana items to a recreational consumer.
4. Sell or give away pressurized containers of butane or other materials that could be used in the home production of marijuana extracts.
5. Discount a marijuana item if the retail sale of the marijuana is made in conjunction with the retail sale of any other items, including other marijuana items.
6. Sell a marijuana item at a nominal price for promotional purposes.
7. Permit consumers to be present on the licensed premises or sell to a consumer between the hours of 10:00 p.m. and 6:59 a.m. local time the following day.
8. Sell an product that contains cannabinoids and is intended for human consumption, unless that product has been labeled and packaged in accordance with the applicable sections of these rules.
9. Sell or transfer a returned marijuana item where the original package has been altered, opened, damaged, or tampered to another consumer.
10. Sell, transfer, deliver, purchase, or receive any marijuana item other than as provided in § 180-10.1-701 (a) of this rule.
11. Permit a consumer to open or alter a package containing a marijuana item or otherwise remove a marijuana item from packaging required by these rules within the licensed premises or in an area that the licensee controls;
12. Sell a marijuana item whose container does not precisely and clearly indicate the nature of its contents or in any way might deceive any customer as to the nature, composition, quantity, age or quality of such marijuana items.
13. Permit a consumer to bring marijuana items onto the licensed premises except for marijuana items being returned for refund or exchange as allowed by this rule.

§ 180-10.1-705 Retailer Operational Requirements

- a) Prior to completing the sale of a marijuana item to a consumer, a retailer must verify that the consumer has a valid, unexpired government-issued photo identification and must verify that the consumer is 21 years of age or older by viewing the consumer's:
 - 1. Passport;
 - 2. Driver license, whether issued in this state or by any other state, as long as the license has a picture of the person;
 - 3. United States military identification card; or
 - 4. Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.
- b) Marijuana items offered for sale by a retailer must be stored in such a manner that the items are only accessible to authorized representatives until such time as the final sale to the consumer is completed.

§ 180-10.1-710 Retailer Premises

- a) The licensed premises of a retailer:
 - 1. May not be located in an area that is outside of the approved location for marijuana retail establishments.
 - 2. May not be located within 500 feet of:
 - i. A public or private school;
 - ii. Any church, hospital, medical clinic;
 - iii. Daycare center; or
 - iv. Youth center;
 - 3. Must be enclosed on all sides by permanent walls and doors.
- b) A retailer must post in a prominent place signs that read:
 - 1. "No Minors Permitted Anywhere on the Premises";
 - 2. "No On-Site Consumption"; and
 - 3. Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".
- c) A retailer must designate a consumer sales area on the licensed premises where consumers are permitted. The area shall include the portion of the premises where marijuana items are displayed for sale to the consumer and sold and may include other contiguous areas such as a lobby or a restroom. The consumer sales area is the sole area of the licensed premises where consumers are permitted.
- d) All inventory must be stored on the licensed premises.
- e) For purposes of determining the distance between a retailer and a school referenced in § 180-10.1-710 (a)(2), "within 500 feet" means a straight line measurement in a radius extending for 500 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the licensed premises of a retailer. If any portion of the licensed premises is within 500 feet of a school as described § 180-10.1-710 (a)(2) an applicant will not be licensed.

- § 180-10.1-801 General Processor Requirements
- § 180-10.1-805 Privileges; Prohibitions
- § 180-10.1-810 Endorsements
- § 180-10.1-815 Processor Policies and Procedures
- § 180-10.1-820 Processor Training Requirements
- § 180-10.1-825 Cannabinoid Concentrate and Extract Processor Requirements
- § 180-10.1-830 Recordkeeping

§ 180-10.1-801 General Processor Requirements

- a) A processor must:
 - 1. Use equipment, counters and surfaces for processing that are food-grade and do not react adversely with any solvent being used.
 - 2. Have counters and surface areas that are constructed in a manner that reduce the potential for development of microbials, molds and fungi and that can be easily cleaned.
 - 3. Maintain the licensed premises in a manner that is free from conditions which may result in contamination and that is suitable to facilitate safe and sanitary operations for product preparation purposes.
 - 4. Store all marijuana items not in use in a locked area, including products that require refrigeration in accordance with plans submitted in § 180-10.1-310(f).
- b) A processor may not process, transfer or sell a marijuana item:
 - 1. That by its shape, design or flavor is likely to appeal to minors, including but not limited to:
 - i. Products that are modeled after non-cannabis products primarily consumed by and marketed to children; or
 - ii. Products in the shape of an animal, vehicle, person or character.
 - 2. That is made by applying cannabinoid concentrates or extracts to commercially available candy or snack food items.
 - 3. That contains Dimethyl sulfoxide (DMSO).
- c) A processor may not treat or otherwise adulterate a cannabinoid product, concentrate or extract with any non-cannabinoid additive that would increase potency, toxicity or addictive potential, or that would create an unsafe combination with other psychoactive substances. Prohibited additives include but are not limited to nicotine, caffeine, chemicals that increase carcinogenicity or cardiac effects.

§ 180-10.1-805 Privileges; Prohibitions

- a) A processor may:
 - 1. Transfer, sell or transport:
 - i. Cannabinoid concentrates, extracts, and products for which the processor has an endorsement to a processor, class 1 lounge, wholesaler, retailer, or research certificate holder; and
 - ii. Marijuana waste to a producer, processor, wholesaler, or research certificate holder.
 - 2. Purchase and receive:

- i. Whole, non-living marijuana plants that have been entirely removed from any growing medium from a producer, wholesaler, or from a research certificate holder;
 - ii. Usable marijuana from a producer, wholesaler, or from a research certificate holder;
 - iii. Cannabinoid concentrates, extracts and products from a processor with an endorsement to manufacture the type of product received, or from a research certificate holder;
 - iv. Marijuana waste from a producer, processor, wholesaler, retailer, laboratory, or research certificate holder; and
 - v. Cannabinoid concentrates, extracts, and products produced by the licensee that have been held in bailment by a licensed wholesaler.
 - 3. Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these regulations.
- b) A processor may not transfer, sell transport, purchase, or receive any marijuana item other than as provided in § 180-10.1-805 (a).

§ 180-10.1-810 Endorsements

- a) A marijuana processor may only process and sell cannabinoid products, concentrates or extracts if the processor has received an endorsement from the Commission for that type of processing activity. Endorsements types are:
 - 1. Cannabinoid edible processor;
 - 2. Cannabinoid topical processor;
 - 3. Cannabinoid concentrate processor; and
 - 4. Cannabinoid extract processor.
- b) An applicant must request an endorsement upon submission of an initial application but may also request an endorsement at any time following licensure.
- c) In order to apply for an endorsement an applicant or processor licensee must submit a form prescribed by the Commission that includes a description of the type of products to be processed, a description of equipment to be used, and any solvents, gases, chemicals or other compounds proposed to be used to create extracts or concentrates.
- d) Only one application and license fee is required regardless of how many endorsements an applicant or licensee requests or at what time the request is made.
- e) An individual processor licensee may hold multiple endorsements.
- f) For the purposes of endorsements any cannabinoid product that is intended to be consumed or ingested orally or applied in the mouth is considered a cannabinoid edible.
- g) If a processor is no longer going to process the product for which the processor is endorsed the processor must notify the Commission in writing and provide the date on which the processing of that product will cease.
- h) The Commission may deny a processor's request for an endorsement if the processor cannot or does not meet the requirements stated in these regulations for the endorsement that is requested.

§ 180-10.1-815 Processor Policies and Procedures. A processor must create and maintain written, detailed standard policies and procedures that include but are not limited to:

- a) Instructions for making each cannabinoid concentrate, extract or product.

- b) The ingredients and the amount of each ingredient for each process lot;
- c) The process for making each product;
- d) The number of servings in a process lot;
- e) The intended amount of THC per serving and in a unit of sale of the product;
- f) The process for making each process lot homogenous;
- g) If processing a cannabinoid concentrate or extract:
 - 1. Conducting necessary safety checks prior to commencing processing;
 - 2. Purging any solvent or other unwanted components from a cannabinoid concentrate or extract;
- h) Procedures for cleaning all equipment, counters and surfaces thoroughly;
- i) Procedures for preventing growth of pathogenic organisms and toxin formation;
- j) Proper handling and storage of any solvent, gas or other chemical used in processing or on the licensed premises in accordance with material safety data sheets and any other applicable laws;
- k) Proper disposal of any waste produced during processing in accordance with all applicable local, state and federal laws, rules and regulations;
- l) Quality control procedures designed to maximize safety and minimize potential product contamination;
- m) Appropriate use of any necessary safety or sanitary equipment; and
- n) Emergency procedures to be followed in case of a fire, chemical spill or other emergency.

§ 180-10.1-820 Processor Training Requirements

- a) A processor must have a comprehensive training program that includes, at a minimum, the following topics:
 - 1. The standard operating policies and procedures;
 - 2. The hazards presented by all solvents or other chemicals used in processing and on the licensed premises as described in the material safety data sheet for each solvent or chemical; and
 - 3. Applicable Commission statutes and rules.
- b) At the time of hire and prior to engaging in any processing, and once yearly thereafter, each employee involved in the processing of a cannabinoid concentrate, extract or product must be trained in accordance with the processor's training program.

§ 180-10.1-825 Cannabinoid Concentrate and Extract Processor Requirements

- a) Cannabinoid Concentrates or Extracts. A processor with a cannabinoid concentrate or extract endorsement:
 - 1. May not use Class I solvents as those are classified in the Federal Drug Administration Guidance, Table I, published in the Federal Register on December 24, 1997 (62 CFR 67377).
 - 2. Must:
 - i. Only use a hydrocarbon-based solvent that is at least 99 percent purity.
 - ii. Only use a non-hydrocarbon-based solvent that is food-grade.
 - iii. Work in an environment with proper ventilation, controlling all sources of ignition where a flammable atmosphere is or may be present.
 - iv. Use only potable water and ice made from potable water in processing.

- v. If making a concentrate or extract that will be used in a cannabinoid edible, be endorsed as a cannabinoid edible processor and comply with [above provision on edible processor requirements].
- b) Cannabinoid Extracts. A processor with an endorsement to make cannabinoid extracts:
 - 1. May not use pressurized canned flammable fuel, including but not limited to butane and other fuels intended for use in camp stoves, handheld torch devices, refillable cigarette lighters and similar consumer products.
 - 2. Must:
 - i. Process in a:
 - 1. Fully enclosed room clearly designated on the current floorplan of the licensed premises.
 - 2. Room and with equipment, including all electrical installations that meet the requirements of the CNMI Department of Public Work's building code, and the CNMI Fire Code.
 - ii. Use a professional grade closed loop extraction system designed to recover the solvents and built to codes of recognized and generally accepted good engineering standards, such as those of:
 - 1. American National Standards Institute (ANSI);
 - 2. Underwriters Laboratories (UL); or
 - 3. The American Society for Testing and Materials (ASTM).
 - iii. If using carbon dioxide in processing, use a professional grade closed loop carbon dioxide gas extraction system where every vessel is rated to a minimum of six hundred pounds per square inch.
 - iv. Have equipment and facilities used in processing approved for use by the CNMI Department of Fire and Emergency Services.
 - v. For extraction system engineering services, including but not limited to consultation on and design of extraction systems or components of extraction systems, use the services of a professional engineer registered with the CNMI Board of Professional Licensing.
 - vi. Have an emergency eye-wash station in any room in which cannabinoid extract is being processed.
 - vii. Have all applicable material safety data sheets readily available to personnel working for the processor.

§ 180-10.1-830 Recordkeeping

- a) A processor must keep records documenting the following:
 - 1. How much marijuana is in each process lot;
 - 2. If a product is returned by a licensee, how much product is returned and why;
 - 3. If a defective product was reprocessed, how the defective product was reprocessed; and
 - 4. Each training provided in accordance with § 180-10.1-820, the names of employees who participated in the training, and a summary of the information provided in the training.
- b) A processor must obtain a material safety data sheet for each solvent used or stored on the licensed premises and maintain a current copy of the material safety data sheet and a

receipt of purchase for all solvents used or to be used in an extraction process on the licensed premises.

- c) If the Commission requires a processor to submit or produce documents to the Commission that the processor believes falls within the definition of a trade secret, the processor must mark each document “confidential” or “trade secret”.

Part 900 MARIJUANA WHOLESALER

§ 180-10.1-901 Privileges; Prohibitions

§ 180-10.1-905 Marijuana Reserve Requirements

§ 180-10.1-901 Privileges; Prohibitions

- a) A wholesale licensee may:
1. Sell, including sale by auction, transfer and or transport:
 - i. Any type of marijuana item to a retailer, wholesaler, Class 1 lounge, or research certificate holder, except that whole, non-living marijuana plants may not be transferred to a retailer;
 - ii. Immature marijuana plants and seeds to a producer, or retailer;
 - iii. Usable marijuana to a producer that the wholesaler has stored on the producer’s behalf;
 - iv. Usable marijuana, cannabinoid extracts and concentrates to a processor licensee, or retailer; and
 - v. Marijuana waste to a producer, processor, wholesaler, research certificate holder, or an approved waste disposal service.
 2. Purchase or receive:
 - i. Any type of marijuana item from a wholesaler;
 - ii. Cannabinoid concentrates, extracts, and products from a processor with an endorsement to manufacture the type of product received;
 - iii. Seeds, immature plants or usable marijuana from a producer, or wholesaler;
 - iv. Whole, non-living marijuana plants that have been entirely removed from any growing medium from a producer; and
 - v. Marijuana waste from a producer, processor, wholesaler, retailer, laboratory, or research certificate holder.
 3. Transport and store marijuana items received from other licensees, pursuant to the requirements of ;transport and storage provisions below
 4. Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these regulations.
- b) A wholesale licensee may not sell, deliver, purchase, or receive any marijuana item other than as provided in section (a) of this rule.
- c) For purposes of this rule, “marijuana item” does not include a mature marijuana plant.

§ 180-10.1-905 Marijuana Wholesaler Reserve Requirements. [RESERVED]

Part 1000

MARIJUANA LOUNGE

- § 180-10.1-1001 Class 1 Lounge Privileges; Prohibitions
- § 180-10.1-1005 Class 1 Lounge Operational Requirements
- § 180-10.1-1010 Class 1 Lounge Premises
- § 180-10.1-1015 Class 2 Lounge Privileges; Prohibitions
- § 180-10.1-1020 Class 2 Lounge Operational Requirements
- § 180-10.1-1025 Class 2 Lounge Premises

§ 180-10.1-1001 Class 1 Lounge Privileges; Prohibitions

a) A Class 1 Lounge may:

1. Between the hours of 7:00 AM and 2:00 AM local time, sell marijuana items from the licensed premises to a consumer 21 years of age or older;
2. Sell:
 - i. Marijuana items to a consumer 21 years of age or older within a licensed premises.
 - ii. Marijuana waste to a producer, processor, wholesaler, retailer, or research certificate holder.
 - iii. Returned marijuana items to a producer, processor or wholesaler who transferred the item to the Class 1 Lounge.
3. Deliver:
 - i. Marijuana waste to a producer, processor, wholesaler, retailer, or research certificate holder.
 - ii. Returned marijuana items to a producer, processor or wholesaler who transferred the item to the retailer.
4. Purchase and receive:
 - i. Usable marijuana from a producer, wholesaler, processor, retailer or from a research certificate holder;
 - ii. Cannabinoid concentrates, extracts, and products from a processor, retailer or from a research certificate holder;
 - iii. Any marijuana item, except for whole, non-living marijuana plants, from a wholesaler; and
 - iv. Any marijuana item from a laboratory.
5. Refuse to sell marijuana items to a consumer;
6. Allow a laboratory licensee to obtain samples for purposes of performing testing as provided in these regulations;
7. Allow for the on-site consumption of marijuana, marijuana extracts, or marijuana products within the licensed premises;
8. Sell marijuana items that have not been tested in a marijuana testing facility so long as the marijuana item is sold to a consumer with a disclaimer that clearly reads "UNTESTED PRODUCT"; and

b) A Class 1 lounge may not:

1. Sell a product that contains cannabinoids and is intended for human consumption, unless that product has been labeled and packaged in accordance with the applicable sections of these rules.
2. Sell edible marijuana items intended for human consumption to a consumer if the premises have not received the necessary food handler's certifications from the CNMI Bureau of Environmental Health.
3. Sell or transfer a returned marijuana item where the original package has been altered, opened, damaged, or tampered to another consumer.
4. Sell, transfer, deliver, purchase, or receive any marijuana item other than as provided in section (a) of this rule.
5. Sell, serve, distribute or allow the consumption of alcohol on the marijuana lounge premises;
6. Permit a consumer under the age of 21 to enter the licensed premises unless that individual meets the requirements of 4 CMC § 53026(f).
7. Permit a consumer to bring marijuana items onto the licensed premises.

§ 180-10.1-1005 Class 1 Lounge Operational Requirements

- a) Prior to completing the sale of a marijuana item to a consumer, a Class 1 Lounge licensee must verify that the consumer has a valid, unexpired government-issued photo identification and must verify that the consumer is 21 years of age or older by viewing the consumer's:
 1. Passport;
 2. Driver license, whether issued in this state or by any other state, as long as the license has a picture of the person;
 3. United States military identification card; or
 4. Any other identification card issued by a state or country that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

§ 180-10.1-1010 Class 1 Lounge Premises

- a) The licensed premises of a Class 1 Lounge:
 1. May not be located in an area that is outside of the approved location for Class 1 Lounge establishments.
 2. May not be located within 500 feet of:
 - i. A public or private school;
 - ii. Any church, hospital, medical clinic;
 - iii. Daycare center; or
 - iv. Youth center;
 3. Must be enclosed on all sides by walls and doors.
- b) A Class 1 Lounge must post in a prominent place signs that read:
 1. "No Minors Permitted Anywhere on the Premises";
 2. Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".

- c) A Class 1 Lounge must designate a consumer consumption area on the licensed premises where consumers are permitted to consume marijuana, marijuana extracts, or marijuana products
- d) All inventory must be stored on the licensed premises.
- e) For purposes of determining the distance between a Class 1 Lounge and a school referenced in subsection (a)(2) of this rule, "within 500 feet" means a straight line measurement in a radius extending for 500 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the licensed premises of a Class 1 Lounge. If any portion of the licensed premises is within 500 feet of a school as described subsection (a)(2) of this rule an applicant will not be licensed.

§ 180-10.1-1015 Class 2 Lounge Privileges; Prohibitions

- a) A Class 2 Lounge may:
 - 1. Deliver:
 - i. Marijuana waste to a producer, processor, wholesaler, retailer, or research certificate holder.
 - 2. Refuse to entry into a Class 2 lounge to a consumer;
 - 3. Allow for the on-site consumption of marijuana, marijuana extracts, or marijuana products within the licensed premises;
 - 4. Permit a consumer to bring marijuana items onto the licensed premises.

- b) A Class 2 lounge may not:
 - 1. Sell:
 - i. Marijuana items to consumers within a licensed premise.
 - 2. Purchase and receive:
 - i. Usable marijuana, immature marijuana plants, and seeds from a producer, retailer or from a research certificate holder;
 - ii. Cannabinoid concentrates, extracts, and products from a processor, retailer or from a research certificate holder;
 - iii. Any marijuana item, except for whole, non-living marijuana plants, from a wholesaler; and
 - iv. Any marijuana item from a laboratory.
 - 3. Sell a product that contains cannabinoids and is intended for human consumption.
 - 4. Allow the consumption of alcohol on the marijuana lounge premises;
 - 5. Permit a consumer under the age of 21 to enter the licensed premises unless that individual meets the requirements of 4 CMC § 53026(f);
 - 6. Permit the commercial sale of marijuana items on the license premises.

§ 180-10.1-1020 Class 2 Lounge Operational Requirements

- a) Prior to allowing entry into the licensed premises, a Class 2 Lounge licensee must verify that the consumer has a valid, unexpired government-issued photo identification and must verify that the consumer is 21 years of age or older by viewing the consumer's:
 1. Passport;
 2. Driver license, whether issued in this state or by any other state, as long as the license has a picture of the person;
 3. United States military identification card; or
 4. Any other identification card issued by a state that bears a picture of the person, the name of the person, the person's date of birth and a physical description of the person.

§ 180-10.1-1025 Class 2 Lounge Premises

- a) The licensed premises of a Class 2 Lounge:
 1. May not be located within 500 feet of:
 - i. A public or private school;
 - ii. Any church, hospital, medical clinic;
 - iii. Daycare center; or
 - iv. Youth center;
 2. Must be enclosed on all sides by permanent walls and doors.
- b) A Class 2 Lounge must post in a prominent place signs that read:
 1. "No Minors Permitted Anywhere on the Premises";
 2. Exit from the licensed premises that reads: "Marijuana or Marijuana Infused Products May Not Be Consumed In Public".
- c) The consumer consumption area is the sole area of the licensed premises where consumers are permitted.
- d) For purposes of determining the distance between a Class 2 Lounge and a school referenced in § 180-10.1-1025 (a)(2), "within 500 feet" means a straight line measurement in a radius extending for 500 feet or less in any direction from the closest point anywhere on the boundary line of the real property comprising a school to the closest point of the licensed premises of a Class 2 Lounge. If any portion of the licensed premises is within 500 feet of a school as described § 180-10.1-1025 (a)(2) an applicant will not be licensed.

Part 1100 PACKAGING LABELING AND ADVERTISING

§ 180-10.1-1101 Packaging and Labeling – Definitions

§ 180-10.1-1105 Packaging for Sale to Consumer

§ 180-10.1-1110 Advertising – Restrictions

§ 180-10.1-1115 Advertising Media, Coupons, and Promotions

§ 180-10.1-1101 Packaging and Labeling – Definitions. For the purposes of these regulations:

- a) "Attractive to minors" means packaging, labeling and marketing that features:

1. Cartoons;
 2. A design, brand or name that resembles a non-cannabis consumer product of the type that is typically marketed to minors;
 3. Symbols or celebrities that are commonly used to market products to minors;
 4. Images of minors; and
 5. Words that refer to products that are commonly associated with minors or marketed by minors.
- b) “Cannabinoid” means any of the chemical compounds that are the active constituents of marijuana.
 - c) “Cannabinoid concentrate or extract” means a substance obtained by separating cannabinoids from marijuana by a mechanical, chemical or other process.
 - d) “Cannabinoid edible” means food or potable liquid into which a cannabinoid concentrate or extract or the dried leaves or flowers of marijuana have been incorporated.
 - e) “Cannabinoid product” means a cannabinoid edible or any other product intended for human consumption or use, including a product intended to be applied to a person’s skin or hair, that contains cannabinoids or the dried leaves or flowers of marijuana.
 - f) “Cannabinoid product” does not include:
 1. Usable marijuana by itself;
 2. A cannabinoid concentrate or extract by itself; or
 3. Industrial hemp.
 - g) “Cartoon” means any drawing or other depiction of an object, person, animal, creature or any similar caricature that satisfies any of the following criteria:
 1. The use of comically exaggerated features;
 2. The attribution of human characteristics to animals, plants or other objects, or the similar use of anthropomorphic technique; or
 3. The attribution of unnatural or extra-human abilities, such as imperviousness to pain or injury, X-ray vision, tunneling at very high speeds or transformation.
 - h) “Child resistant” means designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly.
 - i) “Container” means a sealed, hard or soft-bodied receptacle in which a marijuana item is placed prior to being sold to a consumer.
 - j) “Exit Package” means a sealed container provided at the retail point of sale in which any marijuana items already within a container are placed.

§ 180-10.1-1105 Packaging, Labeling for Sale to Consumer. The purpose of this provision is to set the minimum standards for the packaging of marijuana items that are sold to the consumer, applicable to a licensee

- a) Containers or packaging for marijuana items must protect a marijuana item from contamination and must not impart any toxic or deleterious substance to the marijuana item.
- b) No licensee shall use or allow the use of any mark or label on the container of any marijuana items which are kept for sale, if the container does not precisely and clearly indicate the nature of its contents or in any way might deceive any customer as to the nature, composition, quantity, age, or quality of such marijuana items. Marijuana items that have been tested and satisfactorily complied with the minimum standards set forth by

the Commission shall bear a label that reads: "CERTIFIED"; and whereas, in the absence of a marijuana testing facility or in the absence of testing a marijuana item, marijuana establishments are required to mark or label the marijuana item with a disclaimer that clearly reads: "UNTESTED PRODUCT." All marijuana items which are kept for sale shall bear a label that reads: "This product has not been evaluated by the FDA."

- c) Marijuana items for ultimate sale to a consumer, except for immature plants and seeds, must:
 - 1. Not be packaged or labeled in a manner that is attractive to minors; and
 - 2. Marijuana items for sale must have the following label and container standards:
 - i. The length of time it typically takes for a product to take effect;
 - ii. The amount of marijuana the product is considered the equivalent to;
 - iii. Ingredients and possible allergens;
 - iv. A nutritional fact panel;
 - v. Opaque, child resistant packaging, which must be designed or constructed to be significantly difficult for children under five years of age to open and not difficult for normal adults to use properly as defined by 16 C.F.R. 1700.20 (1995);
 - vi. Marijuana products must be clearly identifiable, when practicable, with a standard symbol indicating that it contains marijuana
 - vii. Label must state the number of servings contained within a container
- d) Packaging may not contain any text that makes an untruthful or misleading statement.
- e) Nothing in this rule:
 - 1. Prevents the re-use of packaging that is capable of continuing to be child-resistant, as permitted by rules established by the Commission; or
 - 2. Prohibits the Commission from imposing additional packaging requirements in their respective rules governing licensees.

§ 180-10.1-1110 Advertising – Restrictions

- a) Marijuana advertising may not:
 - 1. Contain statements that are deceptive, false, or misleading;
 - 2. Contain any content that can reasonably be considered to target individuals under the age of 21, including but not limited to images of minors, cartoon characters, toys, or similar images and items typically marketed towards minors, or references to products that are commonly associated with minors or marketed by minors;
 - 3. Specifically encourages the transportation of marijuana items across state lines;
 - 4. Assert that marijuana items are safe because they are regulated by the Commission or have been tested by a certified laboratory or otherwise make claims that any government agency endorses or supports marijuana;
 - 5. Make claims that recreational marijuana has curative or therapeutic effects;
 - 6. Display consumption of marijuana items;
 - 7. Contain material that encourages the use of marijuana because of its intoxicating effect; or
 - 8. Contain material that encourages excessive or rapid consumption.

- b) A licensee may not make any deceptive, false, or misleading assertions or statements on any informational material, any sign, or any document provided to a consumer.
- c) A licensee must include the following statement on all print, billboard, television, radio and internet advertising in font size legible to the viewer:
 - 1. "Do not operate a vehicle or machinery under the influence of this drug".
 - 2. "For use only by adults twenty-one years of age and older."
 - 3. "Keep out of the reach of children."

§ 180-10.1-1115 Advertising Media, Coupons, and Promotions

- a) The Commission prohibits advertising through handbills that are posted or passed out in public areas such as parking lots and publicly owned property.
- b) A licensee who advertises via web page must utilize appropriate measures to ensure that individuals visiting the web page are over 21 years of age.

Part 1200 LICENSEE CONDUCT, INSPECTIONS AND SUSPENSION

- § 180-10.1-1201 Prohibited Conduct
- § 180-10.1-1205 Dishonest Conduct
- § 180-10.1-1210 Inspections
- § 180-10.1-1215 Suspended Licenses

§ 180-10.1-1201 Prohibited Conduct

- a) Sale to a Minor. A licensee may not sell, deliver, transfer or make available any marijuana item to a person under 21 years of age.
 - 1. Violation of this section for an intentional sale to a minor by a licensee, permittee or license representative will result in a penalty to the licensee.
- b) Identification. A licensee or license representative must require a person to produce identification before selling or providing a marijuana item to that person as required by 4 CMC § 53019.
- c) Access to Premises.
 - 1. A licensee may not:
 - i. During regular business hours for the licensed premises, refuse to admit or fail to promptly admit a Commission regulatory employee who identifies him or herself and who enters or wants to enter a licensed premises to conduct an inspection to ensure compliance with the Act affecting the licensed privileges; or these regulations;
 - ii. Outside of regular business hours or when the premises appear closed, refuse to admit or fail to promptly admit a Commission regulatory employee who identifies him or herself and requests entry on the basis that there is a reason to believe a violation of the Act affecting the licensed privileges; or these regulations is occurring; or
 - iii. Once a regulatory employee is on the licensed premises, ask the regulatory employee to leave until the employee has had an opportunity to conduct an

inspection to ensure compliance with the Act affecting the licensed privileges; or these rules

- d) Use or Consumption of Intoxicants on Duty and Under the Influence on Duty.
 - 1. No licensee, or licensee representative may consume any intoxicating substances while on duty, except for employees as permitted under regulations.
 - 2. No licensee, licensee representative, or permittee may be under the influence of intoxicating substances while on duty.
 - 3. Whether a person is paid or scheduled for a work shift is not determinative of whether the person is considered "on duty."
 - 4. As used in this section:
 - i. "On duty" means:
 - 1. From the beginning to the end of a work shift for the licensed business, including any and all coffee, rest or meal breaks; or
 - 2. Performing any acts on behalf of the licensee or the licensed business outside of a work shift if the individual has the authority to put himself or herself on duty.
 - ii. "Intoxicants" means any substance that is known to have or does have intoxicating effects, and includes alcohol, marijuana, or any other controlled substances.
- e) Permitting Use of Marijuana at Licensed Premises. A licensee may not permit the use or consumption of marijuana, or any other intoxicating substance, anywhere in or on the licensed premises, or in surrounding areas under the control of the licensee, except for [those licensed under 4 CMC 53026.
- f) Import and Export. A licensee may not import marijuana items into the Commonwealth or export marijuana items out of the Commonwealth unless authorized by the Commission.
- g) Permitting, Disorderly or Unlawful Conduct. A licensee may not permit disorderly activity or activity that is unlawful under Commonwealth law on the licensed premises or in areas adjacent to or outside the licensed premises under the control of the licensee.
 - 1. If the prohibited activity under this section results in death or serious physical injury, or involves unlawful use or attempted use of a deadly weapon against another person, or results in a sexual offense which is a Class A felony such as first degree rape, sodomy, or unlawful sexual penetration, the violation could result in license revocation.
 - 2. If the prohibited activity under this section involves use of a dangerous weapon against another person with intent to cause death or serious physical injury, it is a punishable violation.
 - 3. As used in this section:
 - i. "Disorderly activities" means activities that harass, threaten or physically harm oneself or another person.
 - ii. "Unlawful activity" means activities that violate the laws of the Commonwealth, including but not limited to any activity that violates a Commonwealth's criminal statute.
 - 4. The Commission does not require a conviction to establish a violation of this section.

- h) Marijuana as a Prize, Premium or Consideration. No licensee may give or permit the giving of any marijuana item as a prize, premium, or consideration for any lottery, contest, game of chance or skill, exhibition, or any competition of any kind on the licensed premise.
- i) Visibly Intoxicated Persons. No licensee may sell, give, or otherwise make available any marijuana item to any person who is visibly intoxicated.
- j) Additional Prohibitions. A licensee may not:
 - 1. Sell or deliver any marijuana item through a drive-up window.
 - 2. Use any device or machine that both verifies the age of the consumer and delivers marijuana to the consumer; or
 - 3. Deliver marijuana to a consumer off the licensed premises

§ 180-10.1-1205 Dishonest Conduct

- a) False Statements. A licensee may not:
 - 1. Make a false statement or representation to the Commission or law enforcement in order to induce or prevent action or investigation by the Commission or law enforcement.
 - 2. If the Commission finds that the false statement or representation was intentional, the Commission may charge a violation and could result in license revocation.
- b) Marijuana Item Misrepresentations.
 - 1. A licensee may not misrepresent any marijuana item to a consumer, licensee, or the public, including:
 - i. Misrepresenting the contents of a marijuana item;
 - ii. Misrepresenting the testing results of a marijuana item;
 - iii. Misrepresenting the potency of a marijuana item; or
 - iv. Making representations or claims that the marijuana item has curative or therapeutic effects.
 - 2. A licensee may not treat or otherwise adulterate usable marijuana with any chemical, biologically active drug, plant, substance, including nicotine, or other compound that has the effect or intent of altering the usable marijuana's color, appearance, weight or smell or that has the effect or intent of increasing potency, toxicity or addictiveness.
 - 3. A knowing or intentional violation of this section could result in license revocation.
- c) Supply of Adulterated Marijuana Items.
 - 1. A licensee may not supply adulterated marijuana items.
 - 2. Violation of this section could result in license revocation.
- d) Evidence. A licensee may not:
 - 1. Intentionally destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or ask or encourage another person to do so. Violation of this subsection could result in license revocation.
 - 2. Destroy, damage, alter, remove or conceal potential evidence, or attempt to do so, or ask or encourage another person to do so, in any manner other than intentional.
 - 3. Refuse to give, or fail to promptly give, a Commission regulatory employees or law enforcement officer evidence when lawfully requested to do so.

§ 180-10.1-1210 Inspections

- a) The Commission may conduct:
 - 1. A complaint inspection at any time following the receipt of a complaint that alleges a licensee is in violation of 4 CMC § 53001 et seq or these regulations;
 - 2. A random inspection at any time in order to determine compliance with 4 CMC § 53001 et seq or these regulations; or
 - 3. Compliance transactions in order to determine whether a licensee is complying with 4 CMC § 53001 et seq or these regulations.
- b) A licensee, or licensee representative must cooperate with the Commission during an inspection.

If licensee or licensee representative fails to permit the Commission to conduct an inspection the Commission may seek an investigative subpoena to inspect the premises and gather books, payrolls, accounts, papers, documents or records

§ 180-10.1-1215 Suspended Licenses

- a) Before 7:00 a.m. on the date a license suspension goes into effect, and until the suspension is completed, Commission staff must ensure that a suspension notice sign is posted on each outside entrance or door to the licensed premises.
- b) The suspension notice sign must be posted in a way that allows any person entering the premises to read it. Licensees must use the suspension notice sign provided by the Commission. The sign will state that the license has been suspended by order of the Commission due to violations of the Commonwealth laws (statutes or administrative rules). If there are multiple licenses at the location, the sign will specify which license privileges have been suspended.
- c) During the period of license suspension, the licensee is responsible for ensuring:
 - a. Compliance with all applicable laws and rules; and
 - b. That the suspension notice sign is not removed, altered, or covered.
- d) A licensee or licensee representative may not allow the sale, delivery to or from, or receipt of marijuana items at the licensed premises during the period of time that the license is under suspension. During a period of time that the license is under suspension, a marijuana licensee may operate the business provided there is no sale, delivery to or from, or receipt of a marijuana item.

Part 1300 MEDICINAL MARIJUANA [RESERVED]

Part 1400 LABORATORY LICENSE

§ 180-10.1-1401 Laboratory Licensing Requirements

§ 180-10.1-1405 Laboratory Tracking and Reporting

§ 180-10.1-1410 Laboratory Licensee Prohibited Conduct

§ 180-10.1-1401 Laboratory Licensing Requirements

a) General Requirements

1. A laboratory that intends to collect samples or test marijuana items for producer, processor, wholesaler, or retailer licensees, or research certificate holders must be licensed by the Commission.
2. An applicant for a license under this rule must comply with all applicable application requirements in § 180-10.1-310 and pay the required application and license fees.
3. A laboratory application is subject to the same application review procedures as other applicants.
4. In addition to the denial criteria in § 180-10.1-335, the Commission may refuse to issue a laboratory license to any person who:
 - i. Holds a producer, processor, wholesaler, lounge or retail license;

b) Accreditation by the Commission

1. In addition to the requirements listed in section (a) of this rule, an applicant for a laboratory license must be accredited by the Commission for any cannabis sampling or testing the applicant will perform.
2. An applicant for a license under this rule may apply for licensure prior to receiving accreditation, but the Commission will not issue a license until proof of accreditation is received.
3. The Commission may make efforts to verify or check on an applicant's accreditation status during the licensing process, but an applicant bears the burden of taking all steps needed to secure accreditation and present proof of accreditation to the Commission.
4. In addition to the denial criteria in § 180-10.1-335, the Commission may consider an application incomplete if the applicant does not obtain accreditation from the Commission within six months of applying for a license. The Commission shall give an applicant an opportunity to be heard if an application is declared incomplete under this section, but an applicant is not entitled to a contested case proceeding under 1 CMC § 9113. An applicant whose application is declared incomplete may reapply at any time.
5. A licensed laboratory must maintain accreditation by the Commission at all times while licensed by the Commission. If a laboratory's accreditation lapses or is revoked at any time for any reason while licensed by the Commission, the laboratory may not perform any activities that are subject to the lapsed or revoked accreditation until it is reinstated.
6. Exercising license privileges without proper accreditation is a violation and could result in license revocation.

c) Accreditation

1. A laboratory shall submit an application to the Commission, on a form prescribed by the Commission, proof of receipt of accreditation to ISO/IEC 17025.

2. The Commission shall review the submitted application for Accreditation and related documents submitted in § 180-10.1-1401(c)(1) in determination of approval of Accreditation.

d) **Renewal.**

1. A laboratory must renew its license annually and pay the required renewal fees in accordance with § 180-10.1-320.

§ 180-10.1-1405 Laboratory Tracking and Reporting

- a) A laboratory licensee conducting sampling or testing for licensees is responsible for tracking and recording the following:
 1. Receipt of samples for testing, including:
 - i. Size of the sample;
 - ii. Name of licensee or research certificate holder from whom the sample was obtained;
 - iii. Date the sample was collected; and
 - iv. Identification tag information associated with the harvest or process lot from which the sample was obtained.
 2. Tests performed on samples, including:
 - i. Date testing was performed;
 - ii. What samples were tested for;
 - iii. Name of laboratory responsible for testing; and
 - iv. Results of all testing performed.
 - v. Disposition of any testing sample material.

§ 180-10.1-1410 Laboratory Licensee Prohibited Conduct

- a) In addition to the prohibitions set forth in § 180-10.1-1201, a laboratory licensee may not:
 1. Perform any required marijuana sampling or testing using any sampling or testing methods or equipment not permitted under the laboratory's accreditation through the Commission.
 2. Perform any required marijuana sampling or testing for any licensed marijuana producer, processor, wholesaler or retailer in which the laboratory licensee has a financial interest;
- b) The Commission may suspend or revoke a laboratory license for any violation these regulations. The licensee has a right to a hearing under the procedures of 1 CMC § 9113.
- c) A violation of this regulation could result in license revocation.

Part 1500 MARIJUANA EVENTS

§ 180-10.1-1501 Purpose

These promulgated rules and regulations govern the application for and the conduct of temporary authorization to host marijuana events in the CNMI. No marijuana event, the advertising of

marijuana events, or the allowance for the public consumption of cannabis during a public or private event is authorized or permitted without a valid permit or agreement authorized by these regulations.

The CNMI Cannabis Commission shall enforce these regulations to the extent allowed by law. The Commission shall issue written notice of violation to any person or entity acting in contravention of these regulations pursuant to § 180-10.1-160.

§ 180-10.1-1505 Definitions. In addition to the applicable definitions set forth in § 180-10.1-045, the following items are defined for the purposes of these regulations.

- a) “Commercial Use” means used for revenue generating activities. Active use means the actual physical operations or facilities generating revenue. Passive Use means a supplementary use that augments the revenue generating operations or facility.
- b) “Permittee” means a person or persons given a permit by the Commission and whose name appears on the permit.
- c) “Request for Proposal” (RFP) means an open solicitation made through a bidding process by the Commission to determine interest of potential applicants to host a marijuana event.
- d) “Special Event” means a scheduled and publicly advertised hosting of one or more persons for commercial use, whether active or passive, where marijuana items are to be displayed, possessed, sold, purchased, used and/or consumed at a private place.

§ 180-10.1-1510 Application Procedure

- a) In addition to requirements listed in § 180-10.1-310 required by the Commission in a form provided by the Commission, an applicant for a Temporary Use of Marijuana Items, Special Event permit must submit to the following procedures
 - 1. Provide a detailed description of the type of event to be held. Description shall include, but is not limited to:
 - i. Venue or location where the event will be held
 - ii. Proof of authorization from the private owner or long-term lease holder of the venue or location, permitting the use for the purposes of hosting a Special Event
 - iii. Detailed plan for compliance with 4 CMC § 53019, 53052 and 53070 and methods for ensuring that persons under 21 years of age will not gain entry to the Special Event premises, or to be in view of the use of cannabis during the duration of the Special Event
 - iv. Planned duration and times for the Special Event
 - 4. Submit to the Commission a Special Events Plan that shall include detailed plans for:
 - i. The provision of food and beverages, entertainment, security to ensure compliance with 4 CMC § 53052 and related interests of the Commission;
 - ii. Ventilation and odor-control;
 - iii. Marijuana waste disposal;
 - iv. Prevention of underage entry to the consumption area;
 - v. Over-intoxication by patrons;

- vi. Driving while intoxicated; and
- vii. The illegal distribution of marijuana at the Special Event
- viii. Detailed description of the type of revenue generating activities conducted during the Special Event
 - 1. Should the Special Event be active use in the direct sale or provision of marijuana items, the applicant shall prove to the Commission that all marijuana items are to be procured from an entity or individual licensed by the Commission for the commercial production or sale of marijuana items

§ 180-10.1-1515 Temporary Licensed Premises Designation

- a) Locations for approved to host Special Events will be provided with a Temporary Licensed Premises designation and may be subject to the restrictions and requirements of § 180-10.1-501
- b) The Temporary Licensed Premises Designation shall expire upon the expiration of the Temporary Use of Marijuana at Special Events permit.

§ 180-10.1-1520 Permit for the Temporary Use of Marijuana Items at Special Events Privileges; Prohibitions

- a) An approved permittee for the Temporary Use of Marijuana Items at Special Events may:
 - i. Allow for the display or sale of marijuana items by individuals, businesses, or others in the manner described in the Special Events Plan
 - ii. Allow for the possession, use and consumption of marijuana items by individuals on the approved premises of the event
 - iii. Advertise for any approved Special Event under the restrictions provided by § 180-10.1-1115
- b) An approved permit holder for the Temporary Use of Marijuana Items at Special Events may not:
 - i. Hold a Special Event that is located within 500 feet of any school, child daycare, drug or alcohol treatment facility, or public pool;
 - ii. Hold a Special Event on public property, residential areas, or at events that serve alcohol
 - iii. Advertise or promote a Special Event prior receiving a permit from the Commission
 - iv. Host a Special Event for a period greater than ten (10) days per calendar year

§ 180-10.1-1525 Public Notice. The Commission must provide a public notice thirty (30) days prior to granting a permit under this section and will provide information for members of the public to submit comments on the timing, location, nature of the Special Event, or any other matter. The applicant will be given opportunity to amend the Special Events Plan to provide reasonable accommodations to ameliorate any concerns and weigh public comments in the process for granting a permit.

§ 180-10.1-1530 Fees

If the Commission approves an application and grants an Temporary Use of Marijuana Items at Special Events permit, the following fees must be paid:

- a) Temporary Use of Marijuana Items at Special Events Permit
 - 1) Application Fee - \$500
 - 2) Permit Fee - \$1500 per day the Special Event will take place
- b) Application and Permit Fee are non-refundable and shall be paid to the CNMI Treasury prior to receipt of permit

PART 1600 MARIJUANA RESEARCH CERTIFICATE

§ 180-10.1-1601 Application for Marijuana Research Certificate

§ 180-10.1-1605 Marijuana Research Certificate Privileges; Prohibitions

§ 180-10.1-1601 Application for Marijuana Research Certificate

- a) The Commission shall issue Marijuana Research Certificates to qualifying public and private researchers who present research proposals that demonstrate:
 - 1. The proposed research would benefit the Commonwealth’s cannabis industry, medical research or public health and safety; and
 - 2. The proposed operation and methodology complies with all applicable laws and administrative rules governing marijuana licensees and licensee representatives.
- b) The process for applying for, receiving and renewing a certificate shall be the same as the process for applying for, receiving and renewing a marijuana license under § 180-10.1-310.
- c) In addition to the application requirements in § 180-10.1-310, the applicant must also provide:
 - 1. A clear description of the research proposal;
 - 2. A description of the researchers' expertise in the scientific substance and methods of the proposed research;
 - 3. An explanation of the scientific merit of the research plan, including a clear statement of the overall benefit of the applicant’s proposed research to the Commonwealth’s cannabis industry, medical research, or to public health and safety;
 - 4. Descriptions of key personnel, including clinicians, scientists, or epidemiologists and support personnel who would be involved in the research, demonstrating they are adequately trained to conduct this research;
 - 5. A clear statement of the applicant’s access to funding and the estimated cost of the proposed research;
 - 6. A disclosure of any specific conflicts of interest that the researcher or other key personnel have regarding the research proposal;
 - 7. A description of the research methods demonstrating an unbiased approach to the proposed research; and

8. A description of the quantities of marijuana items, if any, that are proposed be transferred to licensees;
- d) Research certificates will be granted for up to a three-year term.
- e) The Commission may request that the research certificate holder submit information and fingerprints required for a criminal background check at any time within the research certificate term.
- f) A certificate holder may, in writing, request that the Commission waive one or more of these rules. The request must include the following information:
 1. The specific rule and subsection of a rule that is requested to be waived;
 2. The reason for the waiver;
 3. A description of an alternative safeguard the licensee can put in place in lieu of the requirement that is the subject of the waiver, or why such a safeguard is not necessary; and
 4. An explanation of how and why the alternative safeguard or waiver of the rule protects public health and safety, prevents diversion of marijuana, and provides for accountability.
- g) The Commission may, in its discretion, and on a case-by-case basis, grant the waiver in whole or in part if it finds:
 1. The reason the certificate holder is requesting the waiver is because another Commonwealth law prohibits compliance;
 2. The certificate holder cannot comply with the particular rule, for reasons beyond the certificate holder's control or compliance with the rule is cost prohibitive; or
 3. Because of the nature of the research, the Commission finds that compliance with a particular rule is not necessary and that even with the waiver public health and safety can be protected, there is no increased opportunity for diversion of marijuana, and the certificate holder remains accountable.
- h) The Commission must notify the certificate holder in writing whether the request has been approved. If the request is approved the notice must specifically describe any alternate safeguards that are required and, if the waiver is time limited, must state the time period the waiver is in effect.
- i) The Commission may withdraw approval of the waiver at any time upon a finding that the previously approved waiver is not protecting public health and safety or the research certificate holder has other issues with compliance. If the Commission withdraws its approval of the waiver the certificate holder will be given a reasonable period of time to come into compliance with the requirement that was waived.
- j) Applicant must submit their findings to the Commission upon completion of their licensed research.

§ 180-10.1-1605 Marijuana Research Certificate Privileges; Prohibitions

- a) A certificate holder may receive marijuana items from a licensee under 4 CMC § 53036 and these regulations.
- b) A certificate holder:
 1. May not:

- i. Sell or otherwise transfer marijuana items to any other person, transferring to another certificate holder or transferring to another licensee pursuant these rules.
 - ii. Transfer more to another licensee than is permitted in the Commission's order granting the research certificate.
 - 2. Must comply with the testing rules applicable to a producer or processor prior to transferring marijuana items to a licensee.
- c) A certificate holder may not conduct any human subject research related to marijuana unless the certificate holder has received approval from an institutional review board that has adopted the Common Rule, 45 CFR Part 46. (4) All administrative rules adopted by Commission for the purpose of administering and enforcing Title 4, Division 5, Chapter 21 of the Commonwealth Code; and any rules adopted thereunder with respect to licensees and licensee representatives apply to certificate holders except for those which are inconsistent with this regulation.

SUBCHAPTER 180-10.2
COMMONWEALTH CODE OF ETHICS

Part 001 CODE OF ETHICS

§180-10.2.101 Commission to follow Government Ethics Act

§180-10.2.105 Responsibilities of Public Office

§180-10.2.110 Commission Policies

§180-10.2.115 Conflict of Interest

§180-10.2.120 Political Activity

§180-10.2.125 Non-discrimination Policy

§ 180-10.2-101 Commission to follow government Ethics Act. The Commission and its employees shall be subject to and follow the Government Ethics Act found in 1 CMC § 8501 et. seq.

§ 180-10.2-105 Responsibilities of Public Office. Individuals appointed to the Commission are agents of the public and serve for the benefit of the public. They shall uphold and act in accordance with the Constitution of the United States of America, the Constitution of the Commonwealth of the Northern Mariana Islands, and the rules, Regulations and policies pursuant to the Act and the Government Ethics Act.

§ 180-10.2-110 Commission Policies. Commissioners and staff shall comply fully with the policies and standard procedures approved by the Commission.

§ 180-10.2-115 Conflict of Interest. There is a public trust to be protected from the danger of conflict of interest.

(a) A conflict occurs when an official's responsibilities, duties or activities conflict with the official's private interests, whether they are of a business, family, social or other nature.

(b) A Commissioner has an automatic conflict of interest in matters affecting a Commissioner's spouse, children and siblings. A Commissioner must automatically refrain on voting or engaging in any discussions relating to such family members.

(c) Commissioners and Commission staff shall comply with the following Conflict of Interest restrictions:

1. Shall not use their office/staff to seek employment or conduct business.
2. Shall not use their position to obtain private gain or advantage for themselves, a relative or an entity in which they have a present or potential financial interest.
3. Shall not disclose or use confidential information that is not generally available to the public for his/her own or another person's financial benefit.
4. Shall not participate in transactions that they may influence if they know that a spouse, child, or sibling has a substantial financial interest.
5. Shall not use public funds, time or equipment for their own private gain, unless authorized by law.
6. Shall not participate in, vote on, influence or attempt to influence an official decision if they, or the business they are associated with, have a financial interest or can potentially benefit from the matter, unless the interest or benefit is incidental to their position or would normally accrue to them in their profession, occupation or class.
7. Shall not participate or engage in any conduct or activity that is prohibited by the Ethics Act

§ 180-10.2-120 Political Activity. Each Commissioner, Managing Director and Commission staff must be aware of the rules that limit permissible political activity. The following is intended to highlight the kind of activities that can and cannot be engaged in.

(a) Permissible Activities:

1. Voting for the candidate of his/her choice.
2. Expressing opinions on all political subjects and candidates.
3. Membership in any political party, organization or club.
4. Making voluntary contributions to a political organization for its general expenditures.
5. Lobbying and supporting public, Legislative or other Constitutional amendments.

(b) Prohibited Activities:

2. Use of Commission funds, time, personnel or equipment for political
3. Activity unless that use is authorized by law or is incidental to a legally authorized or required activity.

4. Engaging in the discharge, promotion, demotion or changing of the status or compensation of any other official of employee or promising or threatening to do so.
5. Handing over to the other officials or staff any money or other thing of value to promote any political objective.
6. Use of their office or the Commission or influence to interfere with an election, or affect its results, or coerce the political action of any person or party.
7. Being obliged to contribute to any political fund, render any political service or be removed for refusing to do so.
8. Pressuring or coercing staff to participate in political activities or to support political parties or candidates under threat of losing one's employment.
9. Soliciting or receiving political contributions from anyone while on Commission time or on Commission or government property.
10. Campaigning for any candidate for public office during official working hours.
11. Promoting or opposing legislation relating to programs of departments on behalf of the Commission in contravention of Commission authority.

§ 180-10.2-125 Non-discrimination Policy

(a) It is the policy of the Commission that discrimination, for or against any employee, because of race, creed, color, gender (including sexual harassment), sexual orientation, national origin, age, religion, political affiliation, organizational membership, veterans status, disability, or genetic information is prohibited and will not be tolerated. No adverse action or hiring decision shall be made on the basis of any of the above factors except that veterans' status may be considered positively as permitted by law.

(b) The Commission shall maintain every workplace free from unlawful harassment, including sexual harassment. Any employee or official who engages in any act of discrimination or harassment on the basis of any of the above factors violates Commission policy, and such misconduct will subject the employee to corrective action ranging from counseling to disciplinary action up to and including termination. Such harassment by a non-employee (for example, a client or contractor) is also prohibited.

(c) The Commission shall not tolerate any such outside harassment and shall take necessary action to prevent its continuation or recurrence.

(d) Any employee who feels that he or she has been discriminated against on the basis of any of the above factors, or sexually harassed, should immediately report such incidents to a supervisor at any level without fear of reprisal. Confidentiality will be maintained to the extent permitted by the circumstances.

(e) An employer who receives a claim of discrimination or harassment in violation of this policy shall take such complaint seriously and immediately advise the Managing Director or the Commonwealth Equal Employment Opportunity (EEO) Coordinator of the situation. The Managing Director, with the assistance of the EEO Coordinator, if sought, will ensure that it is investigated promptly, privately, and with as much confidentiality as possible, consistent with the need to determine the facts. The investigation will be documented by an investigative report

that will be retained in a confidential file by the Managing Director or EEO Coordinator. Any person accused of a violation shall be allowed the opportunity to rebut the charges.

(e) After determining the facts through the investigation, the Managing Director shall take corrective action as required by the circumstances. This may include counseling any employee, whether or not a violation has occurred; imposing an appropriate sanction, including disciplinary action; making sure that this policy is reiterated to all employees or any group. An employer, or any supervisory staff, who does not take appropriate action also violates this policy and exposes the Commonwealth government to liability.

SUBCHAPTER 180-10.3 HOMEGROWN MARIJUANA REGISTRY

Part 001 HOMEGROWN MARIJUANA REGISTRY

§180-10.3.101 Establishment of Homegrown Marijuana Registry

§180-10.3.105 Homegrown Marijuana Privileges; Prohibitions

§180-10.3.110 Maintenance of Homegrown Marijuana Registry

§180-10.3.101 Establishment of Homegrown Marijuana Registry

- a. Any individual producing, processing, keeping, or storing marijuana at their household or cultivation site for non-commercial purposes must first register to receive a Homegrown Marijuana Registry Card issued by the Commission.
- b. To register, individuals must provide to the Commission:
 1. Names and information of all individuals located in the household;
 2. Any forms required by the Commission and any information identified in the form that is required to be submitted;
 3. A map or sketch of the premises, including the defined boundaries of the premises and the village, street and relative location of the household or cultivation site;
 4. A description of the growing operation including growing media, a description of equipment to be used in the production, and whether production will be indoor, outdoor or both.
 5. Proof of right to occupy the premises;
 - i. If the household is a rental unit, provide:
 1. Agreement from the landlord or owner permitting the growing of marijuana on the premise
 2. Signed rental agreement with the landlord or owner
 6. Description of measures taken to ensure:
 - i. The plants are secure from access by a person under the age of 21 and unauthorized access. For purposes of illustration and not limitation, cultivating marijuana in an enclosed, locked space that persons under 21 years of age do not possess a key to constitutes reasonable precautions; and

- ii. Marijuana plants are cultivated in a location where the plants are not subject to public view without the use of binoculars, aircraft, or other optical aids.
- c. An individual is ineligible to produce, process, keep or store marijuana in their household if they are under 21 years of age or are not otherwise authorized under CNMI law.
- d. A Homegrown Marijuana Registry cardholder shall:
 - 1. Submit an amended registration notifying the Commission of any change concerning the registry identification cardholder's:
 - i. Name
 - ii. Location of residence
 - iii. Description of the growing operation used in the production
- e. The Commission shall:
 - 1. On the date on which the Commission receives an application described in subsection (2) of this section, issue a Homegrown Marijuana Registry card to the applicant verifying that the authority received the complete registration information under subsection of this section and that the information provided meets the requirements listed under 4 CMC § 53012; and
 - 2. Update the Homegrown Marijuana Registry following the issuance of the Homegrown Marijuana Registry card.

§180-10.3.105 Homegrown Marijuana Privileges; Prohibitions

- a. Individuals registered under the Homegrown Marijuana Registry and in possession of a Homegrown Marijuana Registry Card may:
 - 1. Produce, process, keep or store homegrown marijuana at a household for non-commercial purposes by one or more persons 21 years of age and older, if
 - i. the total of homegrown marijuana at the household or cultivation site does not exceed six (6) mature marijuana plants and no more than twelve (12) immature plants at any time.
 - 2. Produce, process, keep or store useable marijuana at a household for non-commercial purposes by one or more persons 21 years of age or older, if:
 - i. The total amount of usable marijuana at the household or cultivation site does not exceed eight (8) ounces of useable marijuana at any time.
 - 3. Produce, process, keep or store homegrown marijuana at a household for non-commercial purposes by a medical marijuana patient or the patient's caregiver who may exceed the six (6) mature marijuana plant limit but not more than twelve (12) mature plants and twenty four (24) immature plants should the patient's physician deem it necessary and practical for the effective treatment of the medical marijuana patient; provided that any additional marijuana produced by the person's marijuana plants in excess of one (1) ounce of marijuana or eight (8) ounces of useable marijuana must remain in the same secure location where the marijuana was cultivated or secured at a person's household and such person holds a homegrown marijuana registry card issued by the Commission, and a document with a physician statement recommending the use of marijuana for medicinal use showing the name of the patient or the caregiver.

4. Make, process, keep or store marijuana products at a household by one or more persons 21 years of age and older, that are properly identified and properly secured to ensure in an enclosed, locked space that persons under 21 years of age do not possess a key.
 5. Deliver, possess, transport or gift not more than one (1) ounce of any usable marijuana at any given time by a person 21 years of age and older to another person 21 years of age or older for non-commercial purposes.
 6. Deliver, possess, transport or gift not more than sixteen (16) ounces of any marijuana products in solid form at any given time by a person 21 years of age or older to another person 21 years of age or older for non-commercial purposes.
 7. Deliver, possess, transport or gift not more than seventy-two (72) ounces of any marijuana products in liquid form at any given time by a person 21 years of age or older to another person 21 years of age or older for non-commercial purposes.
 8. Deliver, possess, transport or gift not more than five (5) grams of marijuana extracts at any given time by a person 21 years of age or older to another person 21 years of age or older for non-commercial purposes.
 9. Deliver, possess, transport or gift not more than six (6) immature marijuana plants at any given time by a person 21 years of age or older to another person 21 years of age or older for non-commercial purposes.
 10. Transport any amount of harvested homegrown marijuana from a person's cultivation site being directly transported to the person's household at any given time by one or more persons 21 years of age or older, where the harvested homegrown marijuana will be secured at the person's household.
 11. Make, process, keep or store homemade marijuana extracts or marijuana concentrates at a household by one or more persons 21 years of age and older if the marijuana extracts or concentrates were produced using only water or vegetable glycerin solvents or other forms of non-solvent extraction processing methods, as described in 4 CMC § 53057(a) in addition to other restrictions in the statute.
- b. Individuals registered under the Homegrown Marijuana Registry and in possession of a Homegrown Marijuana Registry Card may not:
1. Make, process, keep or store homemade marijuana for commercial purposes
 2. Make, process, keep, store, use, or possess homemade marijuana in the presence of a person under 21 years of age, with exemptions and penalties provided under 4 CMC § 53030.
 3. Deliver, possess, transport or gift any quantity of marijuana, useable marijuana, marijuana extracts, mature or immature marijuana plants, marijuana extracts or marijuana concentrates in the presence of a person under 21 years of age, with exemptions provided under 4 CMC § 53030.

§180-10.3.110 Maintenance of Homegrown Marijuana Registry. The Commission shall maintain a ongoing database of Homegrown Marijuana Registrants.



Office of the Secretary
Department of Finance

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PUBLIC NOTICE

PROPOSED AMENDMENTS, DEPARTMENT OF FINANCE, PROCUREMENT REGULATIONS, NMIAC TITLE 70, SUBCHAPTER 70-30.3

INTENDED ACTION TO ADOPT PROPOSED-AMENDED REGULATIONS: The Commonwealth of the Northern Mariana Islands, Department of Finance, Division of Procurement Services, intends to adopt as permanent regulations the attached Proposed-Amended Regulations. The Proposed-Amended Regulations update and modify the Commonwealth's Procurement Regulations set forth in the Northern Mariana Islands Administrative Code (NMIAC), Title 70, and Subchapter 70-30.3. This proposed action is made pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC § 9104(a), and will become effective ten days after adoption and publication in the Commonwealth Register, 1 CMC §9105(b).

AUTHORITY: The Secretary of Finance is responsible for procurement in the Commonwealth (1 CMC § 2553(j)) and is empowered by the Legislature to adopt rules and regulations not inconsistent with law regarding those matters within its jurisdiction (1 CMC §2557).

THE TERMS AND SUBSTANCE: The Proposed-Amended Regulations updates and revises Title 70, Subchapter 70-30.3 of the NMIAC for the purpose of increasing operational efficiency and effectiveness.

THE SUBJECTS AND ISSUES INVOLVED: The Proposed-Amended Regulations involve updates and changes to permissible procurement methods and procedures and affects all stages of procurement including solicitation, selection, award, and contract administration.

DIRECTIONS FOR FILING AND PUBLICATON: The Proposed-Amended Regulations shall be published in the Commonwealth Register in the section on Proposed and Newly Adopted Regulations (1 CMC §9102(a) (1)). Notice of postings will be in convenient places in civic centers, in local government offices in each senatorial district, both in English and in the principal vernacular (1 CMC §9104(a)(1)). A notice of postings and proposed regulations is available online at finance.gov.mp in the announcements section.

TO PROVIDE COMMENTS: Interested persons may submit written comments on the proposed regulations via the following methods:

Email: f.aguon@dof.gov.mp, Subject: Procurement Regulations Comments;

USPS mail: Procurement Regulations, C/O Frank Aguon, Acting Director of Procurement Services, and PO Box 5234 CHR.B, Saipan MP 96950.



Office of the Secretary
Department of Finance



P.O. Box 5234 CHRB, Saipan MP 96950

TEL: (670) 664-1100 FAX: (670) 664-1115

Hand Delivery: Procurement Regulations, C/O Frank Aguon, Acting Director of Procurement Services, Building 1302 Ascencion Drive, Capitol Hill, Saipan.

Comments are due within 30 days from the date of this publication notice. Please submit your data, views, or arguments within the specified time (1 CMC §9104(a) (2)).

These proposed regulations were approved by the Secretary of Finance on April 16, 2021.

Submitted by:

David Dlg. Atalig
Secretary of Finance

4/20/21

Date

Received by:

Matilda A. Rosario
Special Assistant for Administration

04/26/21

Date

Filed and
Recorded by:

Esther Sn. Nesbitt
Commonwealth Registrar

04.27.2021

Date

Pursuant to 1 CMC §2153(e), the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency the CNMI Attorney General and shall be published (1 CMC §2153(f)).

Dated the 26 day of April, 2021.

Edward Manibusan
Attorney General



Ufisinan Sekretariu
Dipattamentun Fainansiát

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NUTISIAN PUPBLIKU

**MANMAPROPONI NA AMENDA SIHA GI DIPATTAMENTUN FAINANSIÁT,
REGULASION PROCUREMENT, NMIAC TITULU 70, SUBCHAPTER 70-30.3**

I AKSION NI MA'INTENSIONA PARA U ADAPTA I MANMAPROPONI-

MA'AMENDA I REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Mariãnas gi Dipattamentun i Fainansiát, i Setbisiun Division i Procurement, ha intensiona para u adapta komu petmanienti na regulasion i mañechettun na Manmaproponi-Ma'amenda na Regulasion siha. I Manmaproponi-Ma'amenda na Regulasion siha ha na nuebu yan tulaika iyon i Regulasion Procurement i Commonwealth ni mapega mo'na gi halum i Administrative Code i Islas Notte Mariãnas (NMIAC), Titulu 70, Subchapter 70-30.3. Esti i maproponi na aksion mafa'tinas sigun para i maneran i Akton Administrative Procedures (APA), 1 CMC § 9104(a), yan siempri umifektibu gi halum dies (10) dihas dispues di adaptasion yan publikasion gi halum i Rehistran Commonwealth, 1 CMC § 9105(b).

ATURIDÁT: I Sekretariun Fainansiát responsábli para i procurement gi halum Commonwealth (1 CMC § 2553(j)) yan ma'aturisa ni Lehislatura para u adapta i areklamentu yan regulasion ni ti pumarehu yan i lai put ayu siha na kasu gi halum aturidát-ñiha (1 CMC § 2557).

I TEMA YAN SUSTANSIAN I PALÁBRA SIHA: I Manmaproponi-Ma'amenda na Regulasion siha ha na nuebu yan ribisa i Titulu 70, Subchapter 70-30.3 nu i NMIAC para i rason nu mamta' "operational efficiency" yan "effectiveness".

SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA: I Manmaproponi-Ma'amenda na Regulasion siha humálum lokkui' i mannuebu yan mantinilaika para i "permissible procurement methods" yan manera ya inafekta todú na "stages" nu procurement kuntu i "solicitation," sileksion, primiu, yan i kuntráta na atministrasion.

DIREKSION PARA U MAPO'LU YAN MAPUPBLIKA: I Manmaproponi-Ma'amenda na Regulasion siha debi na u mapupblika gi halum i Rehistran Commonwealth gi seksiona ni Maproponi yan Nuebu na Ma'adapta na Regulasion siha (1 CMC § 9102(a) (1)). Esti na nutisia debi na u mapega gi halum i kumbinienti na lugát siha gi Ufisinan Atkát di yan gi halum ufisinan gubietnamentu siha gi halum distritun senadot, parehu English yan gi lingguáhin natibu (1 CMC § 9104(a)(1)). Esti na nutisia yan i manmaproponi na regulasion siha managuaha online gi finance.gov.mp gi halum seksiona anunsu.

PARA U MAPRIBENIYI UPIÑON SIHA: I manintiresáo na petsona siha siña ma'intrega hálum tinigi' upiñon put i manmaproponi na regulasion guatu gi tinattiya na manera siha:

Email: f.aguon@dof.gov.mp, Subject: Procurement Regulations Comments;

USPS mail: Procurement Regulations, C/O Frank Aguon, Acting Director of Procurement Services, PO Box 5234 CHRB, Saipan MP 96950.



Ufisinan Sekretariu
Dipattamentun Fainansiât

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Hand Delivery: Procurement Regulations, C/O Frank Aguon, Acting Director of Procurement Services, Building 1302 Ascencion Drive, Capitol Hill, Saipan.

I upiñon siha debi na u manahâlum gi halum 30 dihas ginen i fetchan publikasion esti na nutisia. Put fabot intrega hâlum i imfotmasion-mu, "views," pat agumentu siha gi halum i mamensiona na tiempu (1 CMC §9104(a) (2)).


Esti i manmaproponi na regulasion siha maninaprueba ginen i Sekretariun Fainansiât gi Abril 16, 2021.

Nina'hâlum as:


David Dlg. Atalig
Sekretariun Fainansiât


Fetcha

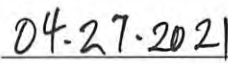
Rinisibi as:


Matilda A. Rosario
Ispisiât Na Ayudanti Para Atministrasion


Fetcha


Pine'lu yan
Ninota as:


Esther SN. Nesbitt
Rehistran Commonwealth


Fetcha

Hu settifikao, sigun para 1 CMC § 2153(e) yan 1 CMC 9104(a)(3), na hu ribisa yan aprueba esti regulasion siha para u fa'tinas yan ligât na sufisienti.

Mafetcha gi diha 26 gi April, 2021.


Edward Manibusan
Henerât Abugâdu



Bwulasiyol Sekkretóoriyo
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ARONGORONGOL TOULAP

**POMMWOL LIIWEL, DEPATTAMENTOOL FINANCE,
MWÓGHUTUGHUTÚL PROCUREMENT, NMIAC TITLE 70, SUBCHAPTER 70-30.3**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI POMMWOL-LIIWELIL MWÓGHUTUGHUT: Commonwealth Téél Falúw kka Efáng llól Marianas, Depattamentool Finance, Bwulasiyol Angaangil Procurement, re mángemángil rebwe adóptááli bwe ebwe lléghló mwóghutughut ikka e appasch bwe Pommwol- Liiwel Mwóghutughut. Pommwol-Liiwelil Mwóghutughut ebwe ayoorai ffél me siiweli Mwóghutughutúl Procurement iye aal Commonwealth ebwe tééló mmwal llól Falúw kka Efáng llól Marianas Administrative Code (NMIAC), Title 70, Subchapter 70-30.3. E tutto pommwol mwóghut yeel sáangi mwóghutughutúl Administrative Procedure Act (APA), 1 CMC § 9104(a), me ebwe bwunguló seigh (10) ráál mwiril aar adóptááli me akkatééwowul me llól Commonwealth Register, 1 CMC §9105(b).

BWÁNGIL: Sekkretóoriyol Finance mille ebwe lemeli mwóghutughutúl Commonwealth (1 CMC § 2553(j)) me eyoor bwángil sáangi Legislature bwe ebwe adóptááli allégh me mwóghutughut ikka ese weewe fengál me allégh ikka e ffil lemelemil.

AUTHORITY: The Secretary of Finance is responsible for procurement in the Commonwealth (1 CMC § 2553(j)) and is empowered by the Legislature to adopt rules and regulations not inconsistent with law regarding those matters within its jurisdiction (1 CMC §2557).

KKAPASAL ME WEEWEL: Pommwol-Liiwelil Mwóghutughut e liiweli me fféerú sefááliy Title 70, Subchapter 70-30.3 reel NMIAC ngáli bwulul ebwe lapaló “operational efficiency” me maamaawal lomwotal.

KKAPASAL ME ÓUTOL: Pommwol-Liiwelil Mwóghutughut e schuulong liiwel me igha re fféerú sefááliy ngáli “permissible procurement methods” me “procedures” me “affects” llól alongal afalafal reel “procurement” e schuulong “solicitation”, áfilil, “award”, me “contract administration”.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Pommwol-Liiwelil Mwóghutughut ebwe akkatééwowul me llól Commonwealth Register llól tálil Pommwol me Ffél Mwóghutughut ikka ra Adóptááli (1 CMC §9102(a)(1)). Arongorongol appasch ebwe lo llól civic center, llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch (1 CMC §9104(a)(1)). Eyoor arongorongol appasch me pommwol mwóghutughut online me *finance.gov.mp* llól tálil arongorong.

REEL ISIISILONGOL KKPAS: Schóó kka re mwuschel isiisilong ischil kkapas wóól pommwol mwóghutughut kkal ebwe mweteló reel ikka e amwirimwiritiw:



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Hand Delivery: Procurement Regulations, C/O Frank Aguon, Acting Director of Procurement Services, Building 1302 Ascencion Drive, Capitol Hill, Saipan.

Ebwe toolong ischil kkapas llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views, ngáre ангиingi llól oora imwu e lo (1 CMC §9104(a)(2)).

Aa átirow pommwol mwóghutughut kkal sáangi Sekkretóoriyol Finance wóól Sééta 16, 2021.

Isáliyalong:

David Dlg. Atalig
Sekkretóoriyol Finance

Ráál

Bwughiyal:

Matilda A. Rosario
Special Assistant ngáli Administration

Ráál

Ammwelil:

Esther Sn. Nesbitt
Commonwealth Registrar

Ráál

Sáangi 1 CMC §2153(e), pommwol mwóghutughut ikka e appasch ra takkal amwuri físchiiy me átirowa bwe aa lléghló fféerul me legal sufficiency sáangi Soulemelemil Allégh Lapalal CNMI me ebwe akkatééow (1 CMC §2153(f)).

Aghikkilátiw wóól 26 ráálil April, 2021.

Edward Manibusan
Soulemelemil Allégh Lapalap

~~DRAFT AMENDMENTS~~

SUBCHAPTER 70-30.3

PROCUREMENT REGULATIONS

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Part 001 - General Provisions

Subpart A - General

§ 70-30.3-001 Purposes

(a) Interpretation. The regulations in this subchapter shall be construed and applied to promote their underlying purposes and policies.

(b) Purposes and Policies. The underlying purposes and policies of the regulations in this subchapter are:

(1) To simplify, clarify, and modernize the procurement policies and practices of the Commonwealth and its agencies;

(2) To make as consistent as possible the procurement policies and practices among the various ~~branches, activities, and~~ agencies of the Commonwealth;

(3) To provide for increased public confidence in the procedures followed in public procurement;

(4) To insure the fair and equitable treatment of persons who deal with the procurement system of the Commonwealth;

(5) To provide increased economy in Commonwealth procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;

(6) To foster effective broad-based competition within the free enterprise system; and

(7) To provide safeguards for the maintenance of a procurement system of quality and integrity.

§ 70-30.3-005 Authority

The regulations in this subchapter are promulgated under the authority of 1 CMC § 2553(j) which gives the Secretary of Finance the duty to be in control of and be responsible for procurement and supply in the Commonwealth.

§ 70-30.3-010 Supplementary General Principles of Law Applicability

Unless displaced by the particular provisions of this subchapter, the principles of law and equity including, but not limited to, the Uniform Commercial Code of the Commonwealth and common law of fraud, conflicts of interest, waste, false pretenses, and public purpose shall supplement the regulations in this subchapter.

§ 70-30.3-015 Requirement of Good Faith

The regulations in this subchapter require all parties, including ~~government~~ Government employees, contractors, and suppliers, involved in the negotiation, bidding, performance, or administration of ~~government~~ Government contracts to act in good faith.

§ 70-30.3-020 Application of Regulations

(a) The regulations in this subchapter apply to every expenditure of public funds irrespective of source, including federal assistance monies and Covenant funds. These regulations apply to all agencies, departments, ~~branches of the government~~, political subdivisions, public ~~corporations~~corporations, and agencies of local ~~government~~Government of the Commonwealth, all collectively, referred to herein as “public agencies.” Any public agency which adopts the regulations in this subchapter or identical regulations may be authorized by the Department of Finance to administer procurement functions pursuant to the provisions of § 70-30.3-101 of this subchapter.

(b) These regulations do not apply to contracts between the ~~government~~Government and its political subdivisions or other governments, nor do they apply to a public corporation or ~~or~~ autonomous agency of the Commonwealth — which has been authorized to conduct its own procurement by enabling statute or other law. Nothing in this subchapter shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative ~~agreement~~agreement, or memoranda. The regulations in this subchapter do not apply to ~~to~~ employment contracts or contracts for personal services under an excepted service.

§ 70-30.3-025 Severability

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

§ 70-30.3-030 Validity of Contract

No ~~government~~ contract shall be valid unless it complies with the regulations in this subchapter.

§ 70-30.3-035 Remedy Against Employee

Any procurement action of an employee of the Government or its agencies or political subdivisions in violation of the regulations in this subchapter is an action outside the scope of ~~his or her~~ their employment. The Government ~~of the Commonwealth of the Northern Mariana Islands~~ will seek to have any liability asserted against it by a contractor which directly results from these improper acts to be determined judicially to be the individual liability of the employee who committed the wrongful act.

Subpart B - Definitions

§ 70-30.3-040 Definitions

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

- (a) **“Acquisition”** means the acquiring by contract with appropriated funds of supplies or services (including construction) by and for the use of the ~~government~~ Government through purchase or lease, whether the supplies or services are already in existence or shall be created, developed, demonstrated, and evaluated. Acquisition begins at the point when needs are established and includes the description of requirements to satisfy ~~government~~ Government needs, solicitation and selection of sources, award of contracts, contract financing, contract performance, contract administration, and those technical and management functions directly related to the process of fulfilling ~~government~~ Government needs by contract.
- (b) **“Attorney General”** means the Attorney General of the Commonwealth of the Northern Mariana Islands.
- (c) **“Bid”** means a response to an invitation for bids in the form of an offer. “Bid” and “sealed bid” may be used interchangeably.
- (d) **“Bid Package”** means the collection of documents that are necessary to participate in an invitation for bids and submit a sealed bid.
- (e) **“Blanket purchase order”** means a purchase order that is used for the acquisition of assorted commodities or services from a known vendor.
- (f) **“Commonwealth”** means the Commonwealth of the Northern Mariana Islands.
- (g) **“Construction”** means the process of building, altering, repairing, improving, or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.
- (h) **“Contract”** means all types of agreements, including purchase orders, regardless of what they may be called for the procurement of goods, services, or construction.
- (i) **“Contract action”** means an action resulting in a contract, including actions for additional supplies or services outside the existing contract scope, but not including actions that are within the scope and under the terms of the existing contract, such as contract modifications issued pursuant to the change order regulation.

- (j) “Cost-plus-a-percentage-of-cost contract” is a prohibited-contract form in which, prior to completion of the work, the parties agree that the fee will be a pre-determined percentage of the total cost of the work.
- (k) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and in accordance with the contract terms and the regulations in this subchapter, and a fee, if any.
- (l) “Days” mean calendar days unless otherwise specified.
- (m) “Definite-quantity contract” means a contract that provides for delivery of a definite quantity of specific supplies or services for a fixed period. This type of contract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the contract period.
- (n) “Director” means the Director of Procurement Services.
- (o) “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, shall be referred to a neutral third party for resolution.
- (p) “Employee” means an individual receiving a salary from the Government, including appointive and elective officials and non-salaried individuals performing personal services for the Government. This definition extends to the Governor, Lt. Governor, and members of their staff. Consultants, independent contractors, and part-time workers shall be considered employees only with respect to the ethics in public contracting provisions in part 700.
- (q) “Firm-fixed-price contract” means a contract which provides for a price that is not subject to any subsequent adjustment as a result of because of the contractor’s cost experience in performing the contract. This type of contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss.
- (r) “Full and open competition” means a contract action where all responsible sources are permitted to compete.
- (s) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, and leases of real and personal property.
- (t) “Government” means the Government of the Commonwealth of the Northern Mariana Islands which includes the executive and legislative branches. It also includes government Government agencies, political subdivisions, public corporations, and agencies of local Government, all collectively

referred to herein as “public agencies.”

(u) “Government-wide point of entry” means the single point where Government business opportunities that use full and open competition procedures, including synopses of proposed contract actions, solicitations, and associated information, can be accessed electronically by the public.

(v) “Governor” means the Governor of the Commonwealth of the Northern Mariana Islands.

(w) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting sealed bids under the competitive sealed bidding procedure. An invitation for bids is used to describe the Government’s requirements. The invitation may include a bid package, whether attached or incorporated by reference, which is a collection of documents necessary to participate in the solicitation and submit a sealed bid containing an offer. Sealed bids are opened publicly and, with limited exceptions, are evaluated without discussions.

(x) “Offer” means a response to a solicitation that, if accepted, would bind the offeror to perform the resultant contract.

(y) “Offeror” means any person that has submitted an offer.

(z) “Solicitation” means any request to submit offers or quotations to the Government. Solicitations under sealed bid procedures are called “invitations for bids.” Solicitations under negotiated procedures are called “requests for proposals.”

(aa) “Official with expenditure authority” means that public official who may expend, obligate, encumber, or otherwise commit public funds under the Planning and Budgeting Act or under any annual appropriation act.

(bb) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal entity.

(cc) “Policy consultant” means someone with expertise in a particular field or industry that provides intermittent services to the government-Government in the form of high-level policy advice on outcomes of a governmental program and makes recommendations based on those findings.

(dd) “Purchase description” means the words used in a solicitation to describe the goods, services, or construction to be purchased and includes specifications attached to, or made part of, the solicitation.

(ee) “Quote” or “Quotation” means a response to a request for quotation which provides a statement of current prices. It is informational and, unlike an offer,

cannot be accepted by the ~~government~~ Government to form a binding contract. However, a ~~the~~ quotation may be used as a basis for ~~a~~ a ~~government~~ Government offer in the form of a ~~a~~ purchase order.

(ff) **“Request for information”** is a solicitation used for planning purposes and may be used when the ~~government~~ Government does not intend to award a contract ~~on the basis of~~ based on the solicitation or to otherwise pay for the information solicited.

(gg) **“Request for proposals”** is a solicitation document used to communicate the Government’s requirements and solicit proposals.

(hh) **“Requirements ~~c~~contract”** means a contract which provides for filling all actual purchase requirements of designated ~~government~~ Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled with the contractor.

(ii) **“Responsible”** in reference to an offeror ~~—~~ means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(jj) **“Responsive”** in reference to a bidder ~~—~~ means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(kk) **“Secretary”** means the Secretary of Finance.

(ll) **“Services”** means the furnishing of time, labor, or effort by a person other than an employee, and not involving the delivery of a specific ~~end~~ ~~product~~ product other than reports, plans, and incidental documents.

(mm) **“Signature”** refers to the signing of a written document with one's own hand or by an electronic method approved by the Director.

(nn) **“Software-as-a-service”** is a software distribution model in which third-party providers host applications and makes them available to customers over the Internet, and which are considered “Goods” for the purposes of these regulations.

(oo) **“Solicitation”** means a ~~government~~ Government document that requests the submission of offers, quotations, or information. ~~G~~

(pp) **“Vendor”** means a potential supplier of goods or services to the Government.

~~(a) — “Attorney General” means the Attorney General of the Commonwealth of the Northern Mariana Islands.~~

~~(f) — “Bid”~~

~~(f) — “Bidder”~~

~~(f) — “Bid Package”~~

~~(b) — “Construction” means the process of building, altering, repairing, improving, or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.~~

~~(c) — “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services, or construction, including purchase orders.~~

~~(f) — “Contractor” means~~

~~(f) — “Copies” refers to duplications of original documents including bids, proposals, contracts, supporting forms and related material. Electronic “copies” may replace paper documents when so authorized by the Director.~~

~~(f) — “Reoccurring Services” a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.~~

~~(d) — “Cost reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and in accordance with the contract terms and the regulations in this subchapter, and a fee, if any.~~

~~(f) — “Cost plus a percentage of cost contract” is a prohibited contract form in which, prior to completion of the work, the parties agree that the fee will be a pre-determined percentage of the total cost of the work. Thereby, the more the contractor spends, the greater its fee, and the contractor’s incentive may therefore be to incur cost at the expense of the Commonwealth and not to economize.~~

~~(e) — “Definite quantity contract” means a contract which provides for delivery of a definite quantity of specific supplies or services for a fixed period. This type of contract may be used when it can be determined in advance that a definite quantity of supplies or services will be required during the contract period.~~

~~(f) — “Days” mean calendar days unless specified otherwise.~~

~~(f) — “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.~~

~~(g) — “Employee” means an individual receiving a salary from the government, including appointive and elective officials and non-salaried individuals performing personal services for the government. This definition extends to the Governor, Lt. Governor and members of their staff. Consultants, independent contractors, and part-time workers shall be considered employees only with respect to the ethics in public contracting provisions in part 700.~~

~~(/) — “Equipment” for the purposes of § 70-30.3-215 (1) an item of non-expendable, tangible personal property, having a useful life of more than one year and an acquisition cost which equals or exceeds \$5,000.~~

~~(/) — “Expenditure authority” means~~

~~(h) — “Firm-fixed-price contract” means a contract which provides for a price that is not subject to any subsequent adjustment as a result of the contractor’s cost experience in performing the contract. This type of contract places upon the contractor maximum risk and full responsibility for all costs and resulting profit or loss.~~

~~(i) — “Goods” means all property, including but not limited to equipment, materials, software, subscriptions, memberships, dues, supplies, and other tangible personal property of any kind or nature, printing, insurance, and leases of real and personal property.~~

~~(j) — “Government” or “Commonwealth” means the government of the Commonwealth of the Northern Mariana Islands which includes the executive, legislative, and judicial branches. It also includes government agencies, political subdivisions, public corporations and agencies of local government, all collectively referred to herein as “public agencies.”~~

~~(k) — “Governor” means the Governor of the Commonwealth of the Northern Mariana Islands.~~

~~(l) — “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.~~

~~(/) — “Offer”~~

~~(/) — “Offeror”~~

~~(m) — “Official with expenditure authority” means that public official who may expend, obligate, encumber, or otherwise commit public funds under the Planning and Budgeting Act or under any annual appropriation act.~~

~~(n) — “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.~~

~~(f) — “Policy Consultant” is someone with expertise in a particular field or industry that provides intermittent services to the government in the form of high level policy advice on outcomes of a government program and makes recommendations based on those findings.~~

~~(o) — “Procurement” means buying, purchasing, renting, leasing, or acquiring construction, goods, or services. It also includes all functions that pertain to the obtaining of construction, goods, or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts, and all phases of contract administration.~~

~~(p) — “Director” means the Director of the Division of Procurement and Supply within the Department of Finance, or their designee.~~

~~(q) — “Purchase description” means the words used in a solicitation to describe the goods, services, or construction to be purchased and includes specifications attached to, or made part of, the solicitation.~~

~~(r) — “Quote” or “Quotation” means a response to a request for quotation which provides a statement of current prices. It is informational and, unlike an offer, cannot be accepted by the government to form a binding contract. However, the quotation may be used as a basis for a government offer in the form of a purchase order.~~

~~(r) — “Requirements contract” means a contract which provides for filling all actual purchase requirements of designated Government activities for supplies or services during a specified contract period, with deliveries or performance to be scheduled with the contractor.~~

~~(r) — “Request for Proposals” is a multi step sealed bidding method consisting of a technical phase in which bidders submit unpriced technical offers, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their prices considered.~~

~~(s) — “Responsible” in reference to a bidder, means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.~~

~~(t) — “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.~~

~~(u) — “Secretary” means the Secretary of Finance.~~

~~(v) — “Services” means the furnishing of time, labor, or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans, and incidental documents.~~

~~(f) — “Signature” refers to the signing of a written document with one's own hand or by an electronic method approved by the Director.~~

~~(f) — “Software as a Service (SaaS)” is a software distribution model in which third party providers host applications and makes them available to customers over the Internet. SaaS is considered “Goods” for the purposes of these regulations.~~

~~(f) — “Solicitation”~~

~~(f) — “Vendor”~~

Subpart C - Public Access

§ 70-30.3-050 Public Access to Procurement Information

~~(a) Procurement information shall be a matter of public record and shall be available for public inspection. Procurement information may be kept confidential when necessary to insure proper procurement procedures. This decision shall be made only by the Director.~~

~~Procurement information shall be a matter of public record and shall be available for public inspection. Procurement information may be kept confidential when necessary to insure proper bidding procedures. This decision shall be made only by the P&S Director.~~

~~(b) All Requests for records shall~~ be handled in a manner that complies with the Open Government Act, 1 CMC §§ 9901 – 9918.

Part 100 - Procurement Organization

Subpart A - Director of Procurement ~~Services and Supply~~

§ 70-30.3-101 Creation of Procurement ~~Services and Supply~~ Division

There is created in the Department of Finance a Division of Procurement ~~Services and Supply~~ to assist the Secretary of Finance in the execution of those duties authorized under 1 CMC § 2553(j) and 1 CMC §§ 2581-2590.

§ 70-30.3-105 Director of Procurement ~~Services and Supply (P&S)~~

~~The Secretary of Finance shall appoint a Director of Procurement Services to administer and supervise the day-to-day activities of the Division of Procurement Services. The Director shall be assisted in carrying out his functions and duties by employees of the Division.~~

~~The Secretary of Finance shall appoint a P&S Director of Procurement and Supply to administer and supervise the day to day activities of the Division. The Director of Procurement and Supply shall be assisted in carrying out his functions and duties by employees of the Division of Procurement and Supply Division.~~

§ 70-30.3-110 ~~Duties and Responsibilities of the~~ ~~Duties of the P&S~~ Director of Procurement ~~Services and Supply~~ ~~Duties and Responsibilities~~

~~The duties and responsibilities of the P&S Director~~ duties and responsibilities of the Director include, but are not limited to, the following:

- (a) Ensure that the regulations in this subchapter are observed in all Government procurement;
- (b) Provide advance planning for the centralized purchase of ~~government~~ Government supplies;
- (c) Procure or supervise the procurement of all supplies, goods, and services needed by the government;
- (d) Conduct bidding, procurement, negotiation, or administration of Government contracts upon request of the official with expenditure authority;
- (e) Sell, trade, or otherwise dispose of surplus property belonging to and no longer needed by the Government;
- (f) Exercise general supervision and control over all inventories of supplies belonging to the Government;
- (g) Exercise general oversight and control on the use of physical assets and other capital equipment to prevent waste or abuse or other unauthorized use;
- (h) Establish and maintain programs for the inspection, testing, and acceptance of supplies;
- (i) Hear all protests and disputes; and
- (j) Oversee the administration of ~~government~~ Government contracts.

§ 70-30.3-115 Contract Review, Processing and Oversight

(a) All contracts must first be prepared by the official with expenditure authority who shall certify that he has complied with the Procurement Regulations codified in this subchapter, and that the proposed contract is for a public purpose, and does not constitute a waste or abuse of public funds. All contract documents must be complete including attachments and exhibits, if they are incorporated into the contract by reference. The contract documents prepared by the official with expenditure authority shall be submitted to the Director.

(b) The next step in the contract process is the review by the Director. Upon his own initiative or upon the request of the Attorney General, the Director may refer any contract to the Attorney General for a recommendation before he approves or disapproves of the contract. The Director shall cause such review to occur in a prompt and timely manner.

~~(a) All contracts must first be prepared by the official with expenditure authority who shall certify that the documents comply with Procurement Regulations, codified in this subchapter,~~

~~and that the proposed contract is for a public purpose, and does not constitute a waste or abuse of public funds. All contract documents must be complete including attachments and exhibits, if they are incorporated into the contract by reference, and these documents shall be distributed during the contract review process. The contract documents prepared by the official with expenditure authority shall be submitted to the P&S Director.~~

~~(c) The contract shall next be approved by the Secretary of Finance or his designee who shall certify the availability of funds. If the Secretary finds any aspect of the contract to be deficient or defective in any respect, he shall return the contract to the Director for appropriate resolution with the official with expenditure authority.~~

~~(d) The fourth review is that of the Attorney General or his designee who shall certify the contract as to form and legal capacity.~~

~~(e) The contract shall then be approved by the Governor.~~

~~(b) The next step in the contract process is the review by the P&S Director. Upon his own the Director's initiative or upon at the request of the Public Auditor, the P&S Director may refer any contract to the Public Auditor for a recommendation before he approves or disapproves of approving or denying the contract. The P&S Director shall cause such review to occur in a prompt and timely manner.~~

~~(c) The next review is that of the Attorney General or designee who shall certify the contract as to form and legal capacity. (2) If the Director withdraws approval or refuses to approve a contract, a written basis for determination shall be provided to the expenditure authority.~~

~~(1) A contract may be referred back to Procurement by the Attorney General or the Secretary of Finance for further review based on evidence that it may not comply with this subchapter.~~

~~(2) If the Director withdraws approval or refuses to approve a contract, a written basis for determination shall be provided to the expenditure authority.~~

~~(d) The contract shall next be approved by the Secretary of Finance or his designee who shall certify the availability of funds. If the Secretary finds any aspect of the contract to be deficient or defective in any respect, the contract shall be returned to the P&S Director for appropriate resolution with the official with expenditure authority. The contract shall also be approved by other government agencies that need to certify the availability of funds for the contract.~~

~~(e) The contract shall then be approved by the Governor. (f) After the Governor's approval, the Director shall forward the contract to the contractor for his approval and signature.~~

~~(f) After the Governor's approval, the P&S Director expenditure authority shall forward the contract to the contractor for his approval and signature. (g) After the signature of the contractor, the Director shall review the contract documents for completeness. If he is satisfied, he shall sign in the appropriate space and shall:~~

~~(1) Inform in writing the official with expenditure authority that the contract has been signed by all parties and that he may proceed with contract implementation according to the terms contained therein; and~~

(2) Provide copies of said contract to the:

- (i) Secretary of Finance;
- (ii) Attorney General; and
- (iii) Contractor.

(h) A contract may be referred back to the Director by the Secretary of Finance or the Attorney General for further review based on additional evidence that it may not comply with this subchapter. If the Director withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.

(i) It is the responsibility of the official with expenditure authority to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary Government signatures have been obtained. The supervision, inspection, and administration of a Government contract is the primary responsibility of the official with expenditure authority. However, the supervision, inspection, and administration of construction contracts (including architect-engineer services) shall be performed by the Secretary of the Department of Public Works or his designee unless the Secretary certifies that the expenditure authority has the capability to handle his own construction and architect-engineer contracts. (g) After the signature of by the contractor, the expenditure authority shall forward the contract to the P&S Director for final review of the contract documents for completeness. If satisfied, he the Director shall sign and shall:

(1) Inform in writing the official with the expenditure authority that the contract has been signed by all parties and that he they may proceed with contract implementation according to the terms contained therein;

(2) The expenditure authority is responsible for providing three sets of contracts to the Division of Procurement and Supply for distribution to:

- (i) Division of Finance and Accounting
- (ii) Attorney General
- (iii) Contractor

(i) It is the responsibility of the official with expenditure authority to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary government Government signatures have been obtained. The supervision, inspection, and administration of a government Government contract is the primary responsibility of the official with expenditure authority. However, the supervision, inspection, and administration of construction contracts (including architect-engineer services) shall be performed by the Secretary of the Department of Public Works or designee unless the Secretary certifies that the expenditure authority has the capability to handle their own construction and A&E contracts.(j) No contract is effective against the Commonwealth until all of all the parties whose signatures are required on the contract form have signed the contract. A contract shall contain a right to audit records clause.

(j) For purchases that use small purchases procedures (§ 70-30.3-220), authorization to proceed with a purchase is established when the Director signs a purchase order authorizing the purchase.

~~(j) No contract is effective against the Commonwealth until all of the parties whose signatures are required on the contract form have signed the contract. A contract shall contain a right to audit records clause.~~

§ 70-30.3-120 Split Contracts

~~If the Director determines that a proposed contract has been split into two or more proposed contracts for the purpose of avoiding full and open competition, then the Director shall disapprove the contract and may instruct the expenditure authority on the appropriate competitive procedure that shall be followed.~~

~~If the P&S Director or the Attorney General determines that a contract or a purchase requisition has been split into two or more contracts for the purpose of avoiding bidding, then he may require the contract will be required to be competitively bid.~~

§ 70-30.3-125 Acceptance of Gratuities ~~by the Director of Procurement Services and Division Employees~~by the P&S and Procurement and Supply Division Employees

In addition to the restrictions found in § 70-30.3-725, the ~~P&S~~ Director and the employees of the ~~Division of Procurement Services~~Procurement and Supply Division shall not accept from any person any gift of value given to them with the intent to influence their business judgment.

Subpart B - Procurement Function

§ 70-30.3-130 Decentralized Procurement

(a) All purchases under § 70-30.3-225, § 70-30.3-230, and § 70-30.3-235 ~~shall~~shall be centralized through the ~~P&S~~ Director. However, upon approval by the Secretary, the ~~P&S~~ Director may delegate, in writing, other procurement functions and responsibilities ~~to public agencies~~ upon satisfying the following requirements:

- (1) The procurement regulations in this subchapter have been duly adopted pursuant to the procedures required for adopting official business of such agencies;-
- (2) The agency has adequate and capable staff ~~capability necessary~~ to carry out the functions of the ~~P&S~~ Director; and-
- (3) The agency ~~shall~~ certifies in writing to the ~~P&S~~ Director that it is in compliance with subsections (a)(1) and (a)(2) above.

(b) Where the ~~P&S~~ Director has delegated ~~his their procurement functions responsibilities - authority~~ under this section, the official with expenditure authority may conduct bidding, procurement, negotiation, and the administration of contracts involving funds appropriated to

their own office, department, or agency, or branch. All such activity ~~must~~shall be shown to the reasonable satisfaction of the ~~P&S~~ Director to ~~be in compliance with~~follow the regulations in this subchapter. This delegation of authority ~~must~~shall be reviewed and renewed every five years.

(c) The Director may revoke the delegation of authority provided for in § 70-30.3-130 (a) at any time by submitting advanced written notice to the expenditure authority of the effected agency.

§ 70-30.3-135 Procurement Services

Notwithstanding the decentralized procurement authority of any agency, upon request by the official with expenditure authority, the ~~P&S~~ Director shall provide assistance or conduct the bidding, procurement, negotiation, or administration of a particular contract.

§ 70-30.3-140 Centralized ~~Procurement of Supply ies~~ Purchasing of Supplies

The ~~P&S~~ Director may, with the approval of the Secretary of Finance, purchase ~~certain government~~Government office supplies in large quantities to be relied upon by all departments, agencies, and offices and branches. ~~Notice of available supplies will be circulated to all affected parties and~~ No separate contract or purchase order for these supplies will be approved, unless otherwise waived by the Director.

Part 200 - Source Selection and Contract Formation

Subpart A ~~—~~ Source Selection

§ 70-30.3-201 ~~Requirements for Competition~~ Requirements for Competition ~~and Notice~~

(a) Officials with expenditure authority ~~shall~~ shall provide for full and open competition through use of the competitive procedure that is best suited to the circumstances of the procurement ~~contract~~ action. The competitive procedures ~~available~~ for use in fulfilling the requirement for full and open competition are ~~as follows~~:

~~(1)(a)~~ Competitive Ssealed Bbidding (§ 70-30.3-205);

~~(2)~~ Two-Step Ssealed Bbidding (§ 70-30.3-206);

~~(3)(b)~~ Competitive Ssealed Proposals (§ 70-30.3-210);

~~(4)(c)~~ Architect-Engineer Services (§ 70-30.3-305); and

(54) (d) Competitive Selection Procedures for Professional Services (§ 70-30.3-310).

~~(b) Publication. The Director shall publicize all procurement set out in subsection (a)(1) through (a)(4) in order to increase competition and broaden industry participation. The bidding time (i.e., the time between issuance of the solicitation to the public and opening of bids) shall be prescribed as follows:~~

~~(b) Public Notice.~~

~~(1) The Director shall provide public notice of a proposed procurement that will use any of the competitive procedures identified in subsection (a). that is to be used in a proposed procurement.~~

~~(2) Public notice shall include the following information:~~

~~(i) A brief description of the goods, services, or construction required;~~

~~(ii) Information on how vendors may obtain a copy of the solicitation and a phone number or e-mail address that vendors may use to contact the Division of Procurement Services;~~

~~(iii) The deadline for offers or responses to the solicitation; and~~

~~(iv) The time, date, and location of any conference that is to be held.~~

~~(c) Dissemination of Public Notice.~~

~~(1) For purchases that are estimated not to exceed \$25,000, public notice shall be provided by advertisement of the proposed procurement on the Division of Procurement Services website or in a newspaper of general circulation in the Commonwealth.~~

~~(2) For purchases estimated to exceed \$25,000, public notice shall be provided by advertisement of the procurement in a newspaper of general circulation in the Commonwealth.~~

~~(3) For purchases estimated to exceed \$25,000, and when there is no evidence of adequate local competition (i.e., evidence of two or more local vendors), the Director may require advertisement in both a newspaper of general circulation in the Commonwealth and in a newspaper of general circulation in a state or territory outside of the Commonwealth.~~

~~(d) Advertisement Period. An advertisement period of at least 30 days shall be provided unless the Director determines that a shorter time is reasonable and necessary. A shorter advertisement period shall afford vendors a reasonable opportunity to respond considering the circumstances of the procurement, such as its complexity and urgency. The advertisement period shall never be less than 7 days.~~

~~(e) Extensions. The Director may extend the 30-day advertisement period, by not more than 60 additional days, considering factors such as:~~

~~(1) Degree of urgency;~~

~~(2) Complexity of requirements;~~

~~(3) Expected increase in vendor participation;~~

~~(3) Anticipated extent of subcontracting; and~~

~~(4) Geographic distribution of vendors.~~

~~A public notice must include the following information: A brief description of the goods, services, or construction required;~~

~~Information on how interested vendors may obtain a copy of the solicitation and a phone number or e-mail address that vendors may use to contact the Division of Procurement and Supply.
The deadline for offers or responses to the solicitation
The time, date, and location of any conference that is to be held~~

~~A brief description of the goods, services, or construction required;
Information on how interested vendors may obtain a copy of the solicitation and a phone number or e-mail address that vendors may use to contact the Division of Procurement and Supply.
The deadline for offers or responses to the solicitation
The time, date, and location of any conference that is to be held~~

~~(1) — For advertising purposes, the official with expenditure authority shall advise the Director whether there is adequate local competition (i.e., evidence of two or more potential vendors), for the solicited goods or services. If there is no adequate local competition, the solicitation shall also be advertised in at least one regional newspaper and at least one national publication or on the internet. In such case, the Director shall consider extending the bidding period as provided in § 70-30.3-201(b)(2).~~

~~(d) — Public Availability. A copy of the solicitation shall be made available for public inspection at the Division of Procurement and Supply.~~

~~(f) Amendments.~~

~~(1) When the Government changes its requirements, the Director may amend the solicitation in accordance with the following:~~

~~(i) Amendments issued before the date and time for receipt of offers shall either be issued to all vendors known to have obtained a copy of the solicitation or posted on the Division of Procurement Services website at least one day prior to the date and time for receipt of offers.~~

~~(ii) Amendments issued after the date and time for receipt of offers shall be issued to all parties that have not been eliminated from the competition (i.e., those parties that have timely submitted a bid).~~

~~(iii) If, in the judgment of the Director, based on market research or otherwise, an amendment proposed for issuance after offers have been received is so substantial as to exceed what prospective contractors reasonably could have anticipated, so that additional sources likely would have submitted offers had the substance of the amendment been known to them, the Director shall cancel the original solicitation and issue a new one, regardless of the stage of procurement.~~

~~(2) Amendments may be sent by email, facsimile, postal service, or other appropriate means.~~

~~(3) Amendments shall be made available for public inspection.~~

(4) An amendment shall be sent in sufficient time to permit prospective offerors to consider it in submitting their offers. When an amendment is issued near the due date for submission of offers, the Director shall decide whether an extension of the due date is necessary, based upon the extent of changes made by the amendment. If an extension is deemed necessary, the Director shall extend the due date for submission of offers.

(g) Public Availability. A copy of the solicitation shall be made available for public inspection at the Division of Procurement Services.

§ 70-30.3-202 Electronic Commerce

(a) Electronic Commerce.

(1) The use of terms commonly associated with paper transactions (e.g., “copy,” “document,” “page,” “printed,” “sealed envelope,” and “stamped”) shall not be interpreted to restrict the use of electronic commerce. Contracting officers may supplement electronic transactions by using other media to meet the requirements of any contract action (e.g., transmit hard copy of drawings).

(2) The Director of Procurement Services may exercise broad discretion in selecting the hardware and software that will be used in conducting electronic commerce. However, the Director shall ensure that systems, technologies, procedures, and processes used by the Division of Procurement Services or any agency to conduct electronic commerce:

- (i) Are implemented uniformly throughout the agency, to the maximum extent practicable;
- (ii) Include a single means of providing widespread public notice of acquisition opportunities, that use full and open competition procedures, through the Government wide point of entry and a means of responding to notices or solicitations electronically; and
- (iii) Comply with nationally and internationally recognized standards that broaden interoperability and ease the electronic interchange of information, such as standards established by the National Institute of Standards and Technology.

(3) Before using electronic commerce, the Director or the public agency head shall ensure that the systems are capable of ensuring authentication and confidentiality commensurate with the risk and magnitude of the harm from loss, misuse, or unauthorized access to or modification of the information.

(4) The Division of Procurement Services or public agency may accept electronic signatures and records in connection with Government contracts.

~~(b)(1) Minimum Time. A solicitation period of at least 30 calendar days shall be provided unless the Director determines that a shorter time is reasonable and necessary. Such shorter bidding period must afford potential bidders a reasonable opportunity to respond considering the circumstances of the individual acquisition, such as the complexity, and urgency. The bidding period shall never be less than seven (7) calendar days.~~

~~(b) (2) Times Extensions. To promote competition and avoid paying higher than necessary prices, the Director may extend the solicitation period by not more than 60 additional calendar days, upon considering such factors as:~~

- ~~(i) Degree of urgency;~~

- ~~(ii) Complexity of requirements;~~
- ~~(iii) Anticipated extent of subcontracting;~~
- ~~(iv) Geographic distribution of bidders; and~~
- ~~(v) Normal transmittal time for invitations and bids.~~

~~(c) Public Notice. The Director shall advertise the availability of the invitation for bids or proposals in at least one newspaper of general circulation in the Commonwealth not less than once in each week from the time the solicitation is issued, including the week when the bidding period expires.~~

~~(1) For advertising purposes, the official with expenditure authority shall advise the Director whether there is adequate local competition (i.e., evidence of two or more potential vendors), for the solicited goods or services. If there is no adequate local competition, the solicitation shall also be advertised in at least one regional newspaper and at least one national publication or on the internet. In such case, the Director shall consider extending the bidding period as provided in § 70-30.3-201(b)(2).~~

~~(d) Public Availability. A copy of the solicitation shall be made available for public inspection at the Division of Procurement and Supply.~~

~~(e) No Bids Received: If no bids are received after two consecutive solicitations performed within a 12 month period, and conducted in a manner provided for in subsection (a)(1) through (a)(4), the Director may justify the procurement pursuant to § 70-30.3-225 (Sole Source).~~

§ 70-30.3-205 Competitive Sealed ~~Procurement~~ **Bidding**

(a) All ~~government~~ Government procurement shall be awarded by competitive sealed bidding under this section, except as provided in:

- (1) § 70-30.3-206 (Two-Step Sealed Bidding);
- ~~(2)~~ § 70-30.3-210 (Competitive Sealed Proposals);
- ~~(3)~~ § 70-30.3-206 (Two-Step Sealed Bidding)
- ~~(32)~~ § 70-30.3-220 (Small Purchases) ~~of Equipment above \$5,000~~;
- ~~(43)~~ § 70-30.3-225 (Sole Source Procurement);
- ~~(54)~~ § 70-30.3-230 (Emergency Procurement);
- ~~(65)~~ § 70-30.3-235 (Expedited Purchasing in Special Circumstances);
- ~~(76)~~ § 70-30.3-305 (Architect-Engineer Services); and
- ~~(87)~~ § 70-30.3-310 (Competitive Selection Procedures for Professional Services).

~~(b) (b) Invitation for Bids. An invitation for bids shall contain a clear, accurate, and complete purchase description of the required construction, goods, or services that the contractor is expected to perform or deliver in order to allow potential bidders to properly respond and to allow evaluations to be made on a uniform basis. This description shall include the essential physical and functional characteristics necessary to fulfill the Government's minimum or specified requirements and shall provide the following:~~

~~Invitation for Bids. (1) An invitation for bids number:~~

~~(1) — An invitation for bids shall be issued and the bid package shall include, at the minimum:~~

~~(i) — An invitation for bids number;~~

~~(2ii) DDate of issuance;~~

~~(3iii) NName, address, and location of the issuing office;~~

~~(4iv) SSpecific location where bids ~~must~~shall be submitted;~~

~~(5v) Date, hour, and place of bid opening;~~

~~(vi) — Purchase descriptions of construction, goods, or services shall detail to the greatest extent practicable the specific requirements the contractor is expected to perform or deliver, including the essential physical and functional characteristics necessary to fulfill the government's minimum requirements;~~

~~(6vii) TThe exact quantities to be furnished;~~

~~(7viii) Time, place, and method of delivery or performance requirements;~~

~~(8ix) Essential contractual terms and conditions; and~~

~~(9x) Any bonding requirements.~~

~~(2) — Remittance. The P&S Director shall determine the cost of and associated payment required, if any, for potential bidders to obtain the bid packet.~~

~~Purchase descriptions of construction, goods, or services shall detail to the greatest extent practicable the specific requirements the contractor is expected to perform or deliver. An adequate purchase description shall set forth the essential physical and functional characteristics of the construction, goods, or services necessary to fulfill the government's minimum requirements.~~

~~(c) Application for Brand Name Descriptions. An solicitation-acquisition that uses a brand name description or other purchase description to specify a particular brand name, product, or feature of a product peculiar to one manufacturer is ~~not~~ normally not allowed regardless of the number of sources solicited. It ~~will~~shall be allowed only when justified and approved in accordance with the procedures ~~on justifying~~ for sole-source procurement, § 70-30.3-225. Specifically, the justification ~~shall~~shall indicate that the use of such descriptions in the acquisition is essential to the Government's requirements, thereby precluding consideration of other similar products. "Brand-name or equal" descriptions, and other purchase descriptions that permit ~~vendors-prospective contractors~~ to offer products other than those specifically referenced by brand name, provide for full and open ~~competition~~competition, and do not require justifications ~~or~~ and approval ~~s~~-to support ~~its~~ their use.~~

~~(d) — Bid Solicitation Accuracy. The bid solicitation shall accurately reflect the government requirement. It shall adequately state what is to be done or what is to be delivered to the government in order to allow bidders to properly respond and evaluations to be made on a uniform basis. Exact quantities shall be stated in the statement of deliverables, unless use of a requirements contract is justified under § 70-30.3-265.~~

~~(d) Public Notice shall~~shall~~ be provided for in the manner prescribed by § 70-30.3-201.~~

~~Government i.e.,~~

~~(e) — Publication. The P&S Director shall publicize all invitation for bids in order to increase competition and broaden industry participation. The bidding time (i.e., the time between issuance of the solicitation to the public and opening of bids) shall be prescribed as follows:~~

~~(1) — Minimum Bidding Time. A bidding period of at least 30 calendar days shall be provided unless the P&S Director determines that a shorter time is reasonable and necessary. Such shorter bidding period must afford potential bidders a reasonable opportunity to respond considering the circumstances of the individual acquisition, such as the complexity, and urgency. The bidding period, however, shall never be less than fourteen calendar days.~~

~~(2) — Extended Bidding Period. Because of limited bidding time in certain cases, potential sources may be precluded from bidding and others may be forced to include contingencies that, with additional time, could be eliminated. To avoid unduly restricting competition or paying higher than necessary prices, the P&S Director may increase the 30 day bidding period by not more than 60 additional calendar days, considering such factors as:-~~

- ~~(i) — Degree of urgency;~~
- ~~(ii) — Complexity of requirements;~~
- ~~(iii) — Anticipated extent of subcontracting;~~
- ~~(iv) — Geographic distribution of bidders; and~~
- ~~(v) — Normal transmittal time for invitations and bids.~~

~~(f) — Public Notice. The P&S Director shall advertise the invitation for bids in a newspaper of general circulation in the Commonwealth at least once in each week from the time the solicitation is issued, including the week when the bidding period expires.~~

~~(1) — Before advertising the invitation for bids, the official with expenditure authority shall certify in writing to the P&S Director whether there is adequate local competition for the solicited goods or services based on past experience, or if necessary, based on a survey of available local vendors. If there is adequate local competition (i.e., evidence of two or more vendors preliminarily determined to be responsible bidders or offerors), the advertisement shall be made only within the Commonwealth. The P&S Director may choose to have a separate solicitation package for bid details which cannot be practically stated within the advertisement; in such case, the advertisements shall state that solicitation package(s) are available at the particular agency. For solicitations amounting to \$25,000 and above, the advertisement shall be printed in a separate box and shall appear prominently among other advertisements.~~

~~(2) — If there is no adequate local competition, the invitation for bids shall also be advertised in at least one regional newspaper or at least one national publication or on the internet; in such case, the P&S Director shall consider extending the bidding period as provided in § 70-30.3-205(e)(2).~~

~~(g) — Amendments to Invitations for Bids shall be identified as such and shall require that the bidder acknowledge receipt, in writing, of all amendments issued. The amendment shall reference the portions of the Invitation for Bids it amends.~~

~~(1) — Distribution. Amendments shall be sent to all bidders and made accessible to the public. Amendments may be sent to prospective bidders by email, facsimile, postal service, or other appropriate means.~~

~~(2) — Timeliness. sent decide deemed. Amendments must shall be distributed within a reasonable time, but not less than 5 days, to allow prospective bidders time to consider the amendment(s) in preparing their bids. If the time-~~

~~and date set for receipt of bids will not permit such preparation, the solicitation period shall be extended.~~

~~(g) Bid Receipt.~~

~~(1) All bBids must shall be submitted to the Division of Procurement and Supply and . Bids shall be received prior to the submission due date and time.time set for opening and (c) Bid Submissions; Bid Receipt.~~

~~(1) Bids shall be received at the Division of Procurement Services by the submission due date and time and shall be maintained sealed in a locked receptacle at the office of the Director until publicly opened. If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his signature and print his title on the envelope and deliver it to the Director. No information contained in the bid shall be disclosed prior to the bid opening. The Director shall cause the opened bid to be placed into the sealed receptacle.~~

~~(2) Bids from Outside the Commonwealth. When the Director determines there is inadequate competition (i.e. evidence of less than two local vendors), bids from outside the Commonwealth may be accepted by mail. Bids submitted from vendors outside the Commonwealth must be postmarked by the date set in the invitation for bids and must be received within ten calendar days of that date.~~

~~(3) Bidders outside the Commonwealth shall notify the Director in writing of their intent to bid in order to receive the additional time for the receipt of bids. When the Director determines there is inadequate competition, the solicitation shall contain instructions that vendors shall follow in order to notify the Director in writing of their intent to bid and to receive the additional time for the receipt of bids.~~

~~(4) Bids submitted by electronic commerce shall be considered only if specifically permitted by the solicitation.~~

~~Bids must shall be maintained sealed at the office, or unopened in an electronic format. Electronic or facsimile bids shall not be considered unless permitted by the invitation.~~

~~(4) Bids from outside the Commonwealth. The Director may allow up to seven additional days for the receipt of bids from vendors outside the Commonwealth. Bids received from outside the Commonwealth must be postmarked by the date set in the invitation for bids and must be received within seven days of that date. to~~

~~Bids Bids submitted from vendors outside the Commonwealth must be received by the date postmarked by the date set in the invitation for bids and must be received within seven (7) working days of that date, or submitted through an electronic medium approved by the Director. Bidders outside the Commonwealth must notify the P&S Director in writing of their intent to bid in order to receive this additional seven (7) days for the receipt of the actual bid documents. This notice of intent to bid may be by any mode of written communication including facsimile or email.~~

~~(2) If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his place their signature and print his their name and title on the envelope and deliver it to the P&S Director. No information contained in the bid shall be disclosed prior to the bid opening. The P&S Director shall cause the opened bid to be placed into the sealed receptacle.~~

(h) Bid Opening.

(1) ~~The bid opening shall be conducted by the P&S Director~~ shall conduct the bid opening at the office of the Division of Procurement Services and Supply.

(2) ~~Bids shall~~ be opened publicly in the presence of one or more witnesses at the place and time and place designated in the invitation for bids.

(3) ~~The P&S Director shall be present at the bid opening. The bids received prior to the bid-closing date shall be publicly opened.~~ The total price amount of each bid and the name of, together with the name of each bidder shall be recorded.

(4) Bid submissions shall, the record and each bid shall be open to public inspection.

(5) ~~The P&S Division of Procurement Services Director~~ shall prepare a written summary of each bid opening.

(g) Bid Acceptance; ~~and~~ Bid Evaluation.

(1) Bids ~~shall~~ be unconditionally accepted without alteration or correction, except as authorized in this subchapter. Bids ~~shall~~ be evaluated based on the requirements set forth in the invitation ~~for bids~~, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended.

(h) Responsiveness of Bids.

(1) To be considered for award, a bid ~~must~~ shall comply in all material respects with the invitation for bids. Bids ~~must~~ shall be filled out, executed, and submitted in accordance with the bid instructions. (2) A bid may be considered only if:

(i) ~~The bidder accepts all material terms and conditions of the invitation;~~ and

(ii) ~~Any future award based upon the bid would result in a binding contract with terms and conditions that do not vary from the requirements of the invitation. Electronic or facsimile bids shall not be considered unless permitted by the invitation.~~

(k) Bid Rejection.

(1) A bid may be rejected for any of the following reasons:

(i) ~~Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;~~

(ii) ~~Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to the Government. For example, bids shall be rejected in which the bidder;~~

(i) ~~Protects against future changes in conditions, such as increased costs;~~

(ii) ~~Fails to state a price and indicates that price shall be the price in effect at the time of delivery or;~~

(iii) ~~States a price but qualifies it as subject to price in effect at time of delivery; or~~

(iv) ~~Limits the rights of the Government.~~

(v) ~~Unreasonableness as to price; or~~

(v) A bid from a non-responsible bidder as defined in § 70-30.3-245.

(l) Correction of Bids.

(1) The Director's authority to permit the correction of bids is limited to bids that, as submitted, are responsive to the invitation. The authority to correct bids is not permitted when used to permit correction of bids to make them responsive or to correct a bid mistake resulting from an error in judgment. Whenever a bid mistake is suspected, the Director shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the Director may permit the correction of the bid when:

(i) The mistake is an obvious clerical error that is clearly evident from an examination of the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or

(ii) The bidder alleges a ~~mistake~~ mistake, and the intended bid is clearly evident from the bid document or is otherwise supported by clear and convincing evidence; however, if the correction would displace a lower bid, the correction may be permitted only when the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.

(k) Withdrawal of Bids.

(1) If a bidder requests permission to withdraw a bid rather than correct it and the evidence reasonably supports the existence of a ~~mistake~~ mistake but is not clear and convincing or there is clear and convincing evidence only as to the mistake but not as to the intended bid, the Secretary of Finance or another official above the Director of Procurement Services may permit the bidder to withdraw the bid.

(2) If a bidder requests permission to withdraw a bid rather than correct it and there is clear and convincing evidence both as to the existence of a mistake and as to the bid actually intended; and the bid, both as uncorrected and as corrected, is the lowest received, the Director may make a determination to correct the bid and not permit its withdrawal.

~~(1) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards based on bid mistakes must be approved by the P&S Director in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the government or fair competition shall be allowed. Whenever a bid mistake is suspected, the government shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the government shall only permit correction of the bid or withdrawal of the bid in accordance with subsection (1)(1) or~~

~~(1) Correction of bids. The Director's authority to permit the correction of bids is limited to bids that, as submitted, are responsive to the invitation and may not be used to permit correction of bids to make them responsive. If a bidder requests permission to correct a mistake, the Director may permit the correction when: Correction of bids shall only be permitted when:~~

~~(i) An The mistake is an obvious clerical error mistake is that is clearly evident by a reasonable person when from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or~~

~~(-) There is clear and convincing evidence that establishes both the existence of the mistake and the bid actually intended; the agency head may make a determination permitting the bidder to correct the mistake; however, if correction would result in the displacement of a lower bid,~~

~~such a determination shall not be made unless the existence of the mistake and the bid actually intended must be ascertainable substantially from the invitation and the bid itself; or~~

~~(ii) — The otherwise low bidder alleges a mistake and the intended bid error is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid.~~

~~A low bidder shall not be permitted to correct a bid mistake resulting from an error in judgment.~~

~~(2) — Withdrawal of bids. If a bidder requests permission to withdraw a bid rather than correct it and (1) there is clear and convincing evidence both as to the existence of a mistake and as to the bid actually intended; and (2) the bid, both as uncorrected and as corrected, is the lowest received, the Director may make a determination to correct the bid and not permit its withdrawal.~~

~~If a bidder requests permission to withdraw a bid rather than correct it and (1) the evidence reasonably supports the existence of a mistake or (2) there is clear and convincing only as to the mistake but not as to the intended bid, the Director may permit the bidder to withdraw the bid.~~

~~Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is a clear and convincing evidence as to the existence of a mistake.~~

~~(3) — Cancellation of award~~Cancellation of Awards.

~~(1) — Cancellation of an awards or contracts shall is only be permitted only when:~~

~~(i) Evidence as to the existence of the mistake is not discovered until after the award;~~

~~(ii) There exists no clear and convincing evidence to support the bid intended; and~~

~~(iii) Performance of the contract at the award price would be unconscionable.;~~

~~(iv) — A material misrepresentation is found in the bid;~~

~~(iii) Award.~~

~~(1) — (1) — A The contract mustshall be awarded with reasonable promptness by written notice to the responsible bidder who submitted the lowest-responsive bid.~~

~~(2) — responsive bid, by a responsible bidder whose bid fully meets the requirements of the invitation for bids and the regulations in this subchapter. Unsuccessful bidders shall also be promptly notified in writing.~~

~~(2) — A notice of award is made only Notice of an award shall be made in writing only be made by prior to by the presentation of a contract to the successful bidder that contains all required signatures with all of the required signatures to the bidder. No other notice of an award mayshall be made. No acceptance of an offer may shall occur nor mayshall any contract be formed until a government-Government contract is is written and has been approved by all the officials required by law and regulation.~~

~~(3) — The Director's signature shall be the last in time to be affixed to a contract. Government-Cecontracts shallshall contain a clause stating which states that the signature of the Director shall be the last in time to be affixed and that no The signature of the private contractor shall be the last in time to be affixed to a contract and that no contract can be formed beforeprior to the approval of all required government-Government officials.~~

~~(n3) Negotiating a Bid-Price Adjustment. If n the event all bids exceed available funds and the lowest-responsive bid submitted by a responsible bid of the lowest responsive bid and responsible bidder does not exceed those funds by more than five percent, and time or economic considerations preclude re-solicitation of work of a reduced scope, the Director of Procurement Services may authorize the official with expenditure authority may be authorized by the P&S Director to negotiate a bid-pricen adjustment of the bid price Cincluding changes to in the Government's bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. may be made. These The negotiations shall be documented in writing and placed into the contract file, attached to the bidding documents.~~

~~(o) Notice to Unsuccessful Bidders. The Director of Procurement Services shall promptly notify unsuccessful bidders in writing. Notification shall include the name of the successful bidder and the total price offered in the successful bid.~~

§ 70-30.3-206 Two-Step Competitive Sealed Bidding

~~(4) In the event only one bid is received, the expenditure authority shall~~

~~(a-) Two-Step Sealed Bidding. Two-step sealed bidding is a combination of competitive procedures designed to obtain the benefits of sealed bidding when adequate specifications are not available. An objective is to permit the development of a sufficiently descriptive and not unduly restrictive statement of the GGovernment's requirements, including an adequate technical data package, so that subsequent acquisitions may be made by competitive sealed bidding. Two-step sealed bidding is conducted in two steps:~~

~~(i) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. Step one is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility.~~

~~(ii) Step two consists of the submission of sealed priced bids, by those who submitted acceptable technical proposals in step one, and the evaluation of such bids. Bids submitted in step two are evaluated and the awards made in accordance with competitive sealed bidding procedures (§ 70-30.3-205).~~

~~(b) Conditions for Use. Two-step sealed bidding may be used in preference to the request for proposals method when all of all the following conditions are present:~~

~~(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government;~~

~~(2) Definite criteria exist for evaluating technical proposals;~~

~~(3) More than one technically qualified source is expected to be available;~~

~~(4) Sufficient time will be available for use of the two-step method; and~~

(5) A firm-fixed-price contract will be used.

~~The two-step sealed-bidding method is useful in acquisitions requiring technical proposals, particularly those for complex items. It is conducted in two steps:~~

~~(+) Step one consists of the request for, submission, evaluation, and (if necessary) discussion of a technical proposal. No pricing is involved. The objective is to determine the acceptability of the supplies or services offered. As used in this context, the word "technical" has a broad connotation and includes, among other things, the engineering approach, special manufacturing processes, and special testing techniques. It is the proper step for clarification of questions relating to technical requirements. Conformity to the technical requirements is resolved in this step, but not responsibility. (ca) Request for Technical Proposals. Step One. The first step is a request for technical proposals. The request for technical proposals in step one mustshall include, as a minimum, the following:~~

~~(1) A description of the supplies or services required:-~~

~~(2) A statement of intent to use the two-step method:-~~

~~(3) The requirements of the technical proposal:-~~

~~(4) The evaluation criteria, to include all factors and any significant subfactors:-~~

~~(5) A statement that the technical proposals mustshall not include prices or pricing information:-~~

~~(6) The date, or date and time, by which the proposal mustshall be received:-~~

~~(7) A statement that, (i) in the second step, only bids based onupon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards;~~

~~an (8ii) A statement that eEach bid in the second step mustshall be based on the bidder's own technical proposals:-~~

~~(98) A statement that (i) offerors should submit proposals that are acceptable without additional explanation or information:-~~

~~(10ii) A statement that tThe GGovernment may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted;~~

~~and (11iii) A statement that tThe GGovernment may proceed with the second step without requesting additional information from any offeror; however, the GGovernment may request additional information from offerors of proposals of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with theirtheir offerors;~~

~~(129) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability; and-~~

~~(1340) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. If multiple technical proposals may be submitted, each technical proposal submitted shall be separately evaluated and the submitter will be notified as to its acceptability. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see 14.201-6(s).~~

~~(d) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not whether to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the government-Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.~~

(e) Receipt of Technical Proposals. Upon receipt of technical proposals, the Director of Procurement Services shall:

- (1) Safeguard proposals against disclosure to unauthorized persons; and
- (2) Remove any reference to price or cost.

(f) Evaluation Period. The Director shall establish a time period a time for evaluating technical proposals. The period may vary with the complexity and number of proposals involved.

(g) Categorization of Proposals. Evaluations shall be based on the criteria in the request for technical proposals. Proposals shall be categorized as:

- (1) Acceptable;
- (2) Reasonably susceptible of being made acceptable; or
- (3) Unacceptable.

(h) Non-Responsive Proposal. Any proposal which ~~modifies, or~~ modifies or fails to conform to the essential requirements or specifications of the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.

(i) Proceeding Directly to Step Two. The Director may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, ~~effort~~ effort, and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the Director shall request from those offerors whose proposals may be made acceptable additional clarifying or supplementing information. The Director shall identify the nature of the deficiencies in the ~~proposal~~ proposal, or the nature of the additional information required. The Director may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.

(j) Requests for Additional Information. In initiating requests for additional information, the Director shall fix an appropriate time for proposers to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals submitted. Such time may be extended at the discretion of the Director. If the additional information incorporated as part of a proposal within the final time fixed by the Director establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it shall be categorized as unacceptable.

(k) Notification of Unacceptable Proposal. When a technical proposal is found unacceptable (either initially or after clarification), the Director shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. Upon written request, the Director shall debrief unsuccessful proposers.

(l) Late technical proposals shall not be accepted.

(m) Discontinuation of Step Two. If it is necessary to discontinue two-step sealed bidding, the Director shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the solicitation may be continued by negotiation if the

Director determines that doing so would be in the Government's best interest, considering the following factors:

- (i) Degree of urgency
- (ii) Availability of alternative sources of the construction, goods, or supplies.

~~(f) Step two involves the submission of sealed priced bids by those who submitted acceptable technical proposals in step one. Bids submitted in step two are evaluated and the awards made in accordance with subparts 14.3 and 14.4.~~

~~(f) Conditions for Use. Two step sealed bidding may be used Unless other factors require the use of sealed bidding, two step sealed bidding may be used in preference to the request for proposal method when all of the following conditions are present:~~

- ~~(1) Available specifications or purchase descriptions are not definite or complete or may be too restrictive without technical evaluation, and any necessary discussion, of the technical aspects of the requirement to ensure mutual understanding between each source and the Government.~~
- ~~(2) Definite criteria exist for evaluating technical proposals~~
- ~~(3) More than one technically qualified source is expected to be available.~~
- ~~(4) Sufficient time will be available for use of the two step method.~~
- ~~(5) A firm fixed price contract or a fixed price contract with economic price adjustment will be used.~~

~~(2) Definite criteria exist for evaluating technical proposals~~

~~(3) More than one technically qualified source is expected to be available.~~

~~(4) Sufficient time will be available for use of the two step method.~~

~~(5) A firm fixed price contract or a fixed price contract with economic price adjustment will be used.~~

~~(a) Step One. The first step is a request for technical proposals. The request must include, as a minimum, the following:~~

~~(1) A description of the supplies or services required.~~

~~(2) A statement of intent to use the two step method.~~

~~(3) The requirements of the technical proposal.~~

~~(4) The evaluation criteria, to include all factors and any significant subfactors.~~

~~(5) A statement that the technical proposals must not include prices or pricing information.~~

~~(6) The date, or date and time, by which the proposal must be received.~~

~~(7) A statement that (i) In the second step, only bids based upon technical proposals determined to be acceptable, either initially or as a result of discussions, will be considered for awards, and~~

~~(ii) Each bid in the second step must be based on the bidder's own technical proposals.~~

~~(8) A statement that (i) Offerors should submit proposals that are acceptable without additional explanation or information (ii) The Government may make a final determination regarding a proposal's acceptability solely on the basis of the proposal as submitted; and (iii) The Government may proceed with the second step without requesting additional information from any offeror; however, the Government may request additional information from offerors of proposals that it considers reasonably susceptible of being made acceptable, and may discuss proposals with their offerors~~

~~(9) A statement that a notice of unacceptability will be forwarded to the offeror upon completion of the proposal evaluation and final determination of unacceptability.~~

~~(10) A statement either that only one technical proposal may be submitted by each offeror or that multiple technical proposals may be submitted. When specifications permit different technical approaches, it is generally in the Government's interest to authorize multiple proposals. If multiple proposals are authorized, see 14.201-6(s).~~

~~(f) Information on delivery or performance requirements may be of assistance to bidders in determining whether or not to submit a proposal and may be included in the request. The request shall also indicate that the information is not binding on the Government and that the actual delivery or performance requirements will be contained in the invitation issued under step two.~~

~~(f) Upon receipt, the contracting officer shall:~~

~~(1) Safeguard proposals against disclosure to unauthorized persons;~~

~~(2) Accept and handle data marked in accordance with 15.609 as provided in that section; and~~

~~(3) Remove any reference to price or cost.~~

~~(f) The contracting officer shall establish a time period for evaluating technical proposals. The period may vary with the complexity and number of proposals involved. However, the evaluation should be completed quickly.~~

~~(f) Evaluations must be based on the criteria in the request for proposals. Proposals must be categorized as:~~

~~(i) Acceptable;~~

~~(ii) Reasonably susceptible of being made acceptable; or~~

~~(iii) Unacceptable.~~

~~(f) Any proposal which modifies, or fails to conform to the essential requirements or specifications of, the request for technical proposals shall be considered nonresponsive and categorized as unacceptable.~~

~~(f) The contracting officer may proceed directly with step two if there are sufficient acceptable proposals to ensure adequate price competition under step two, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the contracting officer shall request bidders whose proposals may be made acceptable to submit additional clarifying or supplementing information. The contracting office shall identify the nature of the deficiencies in the proposal or the nature of the additional information required. The contracting officer may also arrange discussions for this purpose. No proposal shall be discussed with any offeror other than the submitter.~~

~~(f) In initiating requests for additional information, the contracting officer shall fix an appropriate time for prospective offerors to conclude discussions, if any, submit all additional information, and incorporate such additional information as part of their proposals submitted. Such time may be extended in the discretion of the contracting officer. If the additional information incorporated as part of a proposal within the final time fixed by the contracting officer establishes that the proposal is acceptable, it shall be so categorized. Otherwise, it must be categorized as unacceptable.~~

~~(f) When a technical proposal is found unacceptable (either initially or after clarification), the contracting officer shall promptly notify the offeror of the basis of the determination and that a revision of the proposal will not be considered. Upon written request, the contracting officer shall debrief unsuccessful offers.~~

- ~~(f) — Late technical proposals are governed by 15.208(b), (c), and (f).~~
- ~~(f) — If it is necessary to discontinue two step sealed bidding, the contracting officer shall include a statement of the facts and circumstances in the contract file. Each offeror shall be notified in writing. When step one results in no acceptable technical proposal or only one acceptable technical proposal, the acquisition may be continued by negotiation.~~
- ~~(n⁴) Sealed Bid Submissions. Step Two. Sealed bids submitted under step two shall follow competitive sealed bidding procedures (Sealed bidding procedures § 70-30.3-205) shall be followed except that an invitations for bids under step two shall shall:~~
- ~~(14) Be — Be issued only to those offerors who submitted submitting acceptable technical proposals in step one;~~
- ~~(2) Not be advertised to comply with public notice requirements;~~
- ~~(2) Include the provision prescribed in 14.201-6(t);~~
- ~~((33) S Prominently state that the bidder shall comply with the specifications and the bidder's technical proposal; and~~
- ~~(4) Reference the step-one request for technical proposal and state that the government Government will consider only bids received from bidders that have submitted acceptable technical proposals. and~~
- ~~(4) Not be synopsisized through the Governmentwide point of entry (GPE) as an acquisition opportunity nor publicly posted (see 5.101(a)).~~
- ~~(f) The names of firms that submitted acceptable proposals in step one will be listed through the GPE for the benefit of prospective subcontractors (see 5.207).~~

§ 70-30.3-210 Competitive Sealed Proposals
Request for Competitive Sealed Proposals

- ~~(a) Competitive Sealed Proposals. The (a) — competitive sealed proposal procedure is used to communicate the Government's requirements and solicit proposals using a . The solicitation document used to communicate the government's requirements is the request for proposals. The request for proposals shall describe:~~
- ~~(1) The Government's requirements;~~
- ~~(2) Anticipated terms and conditions that will apply to the contract;~~
- ~~(3) Information required to be in the offeror's proposal; and~~
- ~~(4) Factors and significant subfactors that will be used to evaluate the proposal and their relative importance.~~
- ~~(b) Conditions for Use. The competitive sealed proposal procedure is used as an alternative to the competitive sealed bidding procedure. When the official with expenditure authority determines in writing that the use of competitive sealed bidding is either not practicable or not advantageous to the government Government and receives the approval of the Director, a contract may be entered into by a request for proposals.~~

~~Conditions for use. RFPWhen the official with expenditure authority determines in writing that the use of the invitation for bids procedure a competitive sealed bidding is either not practicable or not advantageous to the government and receives the approval of the P&S Director, a contract may be entered into by a request for proposals. competitive sealed proposals.~~

~~(b) Request for proposals. Proposals shall be solicited through a request for proposals by conducting a multi step sealed bidding process consisting of an initial technical phase in which bidders submit unpriced technical offers, and a second phase in which those bidders whose technical offers are determined to be acceptable during the first phase have their prices considered. The solicitation shall state:~~

~~(1) That unpriced technical offers are requested;~~

~~(2) Whether priced bids are to be submitted at the same time as unpriced technical offers; if they are, such priced bids shall be submitted in a separate sealed envelope;~~

~~(3) That it is a multi step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;~~

~~(4) The criteria to be used in the evaluation of the unpriced technical offers;~~

~~(5) That the Commonwealth, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;~~

~~(6) That bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential to the extent allowed by Commonwealth and federal law; and~~

~~(7) That the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.~~

~~(c) Remittance. The P&S Director shall determine the cost of and associated payment required, if any, for potential offerors to obtain the request for proposals. bidders to obtain the bid packet.~~

~~(c) Public Notice shall be provided for in the manner provided described in by § 70-30.3-201 (Competition and Notice). - Public notice. Adequate public notice of the request for proposals shall be given in the same manner as provided for in competitive sealed bids~~

~~(d) Copy Costs. The Director may determine the printing costs, if any, that potential offerors shall pay to obtain a copy of a request for proposals. Alternatively, when the Director determine that it is not practicable for the government Government to provide copies of the solicitation, the Director may require that copies be obtained at a location other than a government Government office (i.e. i.e., copy services vendor) with associated copy costs to be paid by the interested vendor.~~

~~(f) Extended Advertisement Bidding Period. The Director may increase the advertisement bidding period by not more than 60 additional calendar days.~~

~~(f) — Amendments to the Invitation for Bids. After receipt of unpriced technical offers, amendments to the Invitation for Bids shall be distributed only to bidders who submitted unpriced technical offers, and they shall be permitted to submit new unpriced technical offers or to amend those submitted. If, in the opinion of the procurement officer, a contemplated amendment will significantly change the nature of the procurement, the Invitation for Bids shall be cancelled in accordance with § 70 30.3 240 and a new Invitation for Bids issued.~~

(ee) Receipt of Pproposals. Proposals shall shall be opened by Procurement in private so as toto avoid disclosure of contents to competing offerors during the process of negotiation. A register of proposals shallshall be prepared and opened for public inspection after contract award.

~~(f) — Mistakes in Proposals. Proposals may be modified or withdrawn due to mistakes under the following circumstances:~~

~~(1) — Confirmation of Suspected mistake. When the procurement officer knows or has reason to conclude before award that a mistake has been made, such officer should request the offeror to confirm the proposal. If the offeror alleges mistake, the proposal may be corrected or withdrawn during any discussions that are held or if the conditions set forth in subsections (c) and (d) of this section are met.~~

~~(2) — Mistakes Discovered After Receipt of Proposals but Before Award. Proposals may be modified or withdrawn in in these situations:~~

~~(A) — During Discussions; Prior to Best and Final Offers. Once discussions are commenced with any offeror or after best and final offers are requested, an offeror may freely correct any mistake by modifying or withdrawing the proposal until the time and date set for receipt of best and final offers.~~

~~(B) — Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The procurement officer may waive such informalities, in writing, or allow the bidder to correct them depending on which is in the best interest of the Commonwealth.~~

~~(C) — Correction of Mistakes. If discussions are not held or if the best and final offers upon which award will be made have been received, mistakes may be corrected and the intended correct offer considered only if:~~

~~(i) — The mistake and the intended correct offer are clearly evident on the face of the proposal, in which event the proposal may not be withdrawn; or~~

~~(ii) — The mistake is not clearly evident on the face of the proposal, but the offeror submits proof of evidentiary value which clearly and convincingly demonstrates both the existence of a mistake and the intended correct offer, and such correction would not be contrary to the fair and equal treatment of other offerors.~~

~~(D) — Withdrawal of Proposals. If discussions are not held, or if the best and final offers upon which award will be made have been received, the offeror may be permitted to withdraw the proposal if:~~

~~(i) — The mistake is clearly evident on the face of the proposal and the intended correct offer is not;~~

~~(ii) — The offeror submits proof of evidentiary value which clearly and convincingly demonstrates that a mistake was made but does not demonstrate the intended correct offer; or~~

~~(iii) — The offeror submits proof of evidentiary value which clearly and convincingly demonstrates the intended correct offer, but to allow correction would be contrary to the fair and equal treatment of the other offerors.~~

~~(E) — Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the Director or expenditure authority finds it would be unconscionable not to allow the mistake to be corrected, and such determination is reviewed and approved by the Attorney General or designee.~~

(F) Evaluation of Proposals factors.

(1) Proposal evaluation is an assessment of the proposal and the offeror's ability to perform the prospective contract successfully. An agency shall evaluate competitive proposals and then assess their relative qualities solely on the factors and ~~subfactors~~ subfactors specified in the solicitation. Evaluations may be conducted using any rating method or combination of methods, including adjectival ratings, numerical weights, and ordinal rankings. The relative strengths, deficiencies, significant weaknesses, and risks supporting proposal evaluation shall ~~should be~~ documented in the contract file. The request for proposals shall ~~shall~~ state the relative importance of price and other evaluation factors. Price or cost to the ~~government~~ Government shall ~~shall~~ be included as an evaluation factor in every solicitation of proposals.

~~(2) — The P&S Director must ensure that the following requirements are complied with in any evaluation of proposals. The Director shall ensure that all~~

~~(1) — All evaluation factors stated in the solicitation shall be considered in determining proposals in the competitive range (i.e., those allowed to participate further in the selection process), and any subsequent evaluations, (including evaluation of best and final offers from the competitive range offerors).~~

~~(3) — Technical evaluations. If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the evaluator or evaluation team shall document the technical evaluation which shall include:~~

~~(i) — A basis for the evaluation;~~

~~(ii) — An assessment of each offeror's ability to accomplish the technical requirements;~~

~~(iii) — A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and~~

~~(iv) — Supporting documentation prepared for the selection decision that shows the proposals' comparative strengths, weaknesses, and risks in terms of the evaluation factors.~~

~~(v) — When technical criteria (generally, criteria other than price) are involved, the Director shall determine in writing that appropriate qualified personnel are assigned to conduct a technical evaluation of the proposals. In forming an evaluation team, the Director shall insure that:~~

~~(i) — The evaluators, including any other personnel responsible for the selection of competitive range offerors or final selection of an offeror, are formally designated to exercise such responsibility by the official with expenditure authority in consultation with the Director; and~~

~~(ii) — Before conducting any evaluation, the official with expenditure authority in consultation with the Director, approves an evaluation plan which as a minimum shall include:~~

~~(A) — A statement of the evaluation factors and any significant subfactors and their relative importance; and~~

~~(B) — A description of the evaluation process, methodology, and techniques to be used.~~

(4) The Director shall promptly notify offerors when they are excluded from the competitive range or otherwise excluded from further consideration. The notice shall state the basis for the exclusion.

(g2) Competitive Range.

~~(1) Before the conduct of written or oral discussions or negotiations, the official with expenditure authority shall determine which proposals are in the competitive range, based on the recommendations of the evaluator or evaluation team, for the purpose of conducting written or oral discussions, and shall~~ include all proposals that have a reasonable chance of being selected for award.

~~(2) When there is doubt as to whether a proposal is in the competitive range, the proposal shall~~ be included. Proposals determined to have no reasonable chance of being selected for contract award ~~shall~~ no longer be considered for selection. A proposal is not reasonably susceptible of being selected for award and can be excluded from the competitive range if it is clear that:-

~~(i) Its contents are so unacceptable that a revision of the proposal in the negotiation stage would be equivalent to accepting a new proposal; or~~

~~(ii) In comparison with other proposals, such proposal clearly has no chance of being selected for award.~~

~~(3) Technical evaluation. If any technical evaluation is necessary beyond ensuring that the proposal meets the minimum requirements in the solicitation, the evaluator or evaluation team shall document the technical evaluation which shall include:-~~

~~(i) The basis for the evaluation;~~

~~(ii) An assessment of each offeror's ability to accomplish the technical requirements;~~

~~(iii) A summary, matrix, or quantitative ranking of each technical proposal in relation to the best rating possible; and~~

~~(iv) A summary of findings. The supporting documentation prepared for the selection decision shall show the proposals' comparative strengths, weaknesses, and risks in terms of the evaluation factors.~~

~~(4) When technical criteria (generally, criteria other than price) are involved, the P&S Director shall determine in writing that appropriate qualified personnel are assigned to conduct a technical evaluation of the proposals. In forming an evaluation team, the P&S Director shall insure that —~~

~~(i) The evaluators, including any other personnel responsible for the selection of competitive range offerors or final selection of an offeror, are formally designated to exercise such responsibility by the official with expenditure authority in consultation with the P&S Director; and~~

~~(ii) Before conducting any evaluation, the official with expenditure authority in consultation with the P&S Director, approves an evaluation plan which as a minimum shall include —~~

~~(A) A statement of the evaluation factors and any significant subfactors and their relative importance;~~

~~(B) A description of the evaluation process, methodology, and techniques to be used; and~~

~~(C) Documentation requirements.~~

~~(g) Notification to offerors excluded in the competitive range. The P&S Director shall promptly notify offerors when they are excluded from the competitive range or otherwise excluded from further consideration. The notice shall state the basis for the exclusion.~~

(h) Exchanges ~~Discussion~~ with ~~responsible~~ Offerors and ~~R~~evisions to ~~P~~roposals.

(1) ~~Clarification.~~ Clarifications are limited exchanges between the ~~G~~overnment and offerors that occur when award without discussions is contemplated. Clarifications may be used to give offerors the opportunity to clarify certain aspects of proposals (~~e.g., e.g.,~~ the relevance of an offeror's past performance information and adverse past performance information to which the offeror has not previously had an opportunity to respond) or to resolve minor clerical errors.

(2) ~~Communications.~~ Communications are exchanges between the ~~G~~overnment and offerors, after receipt of proposals, ~~that are conducted for the purpose of establishing a competitive range. Communications may be conducted to enhance GGovernment understanding of proposals; allow reasonable interpretation of proposals; or facilitate the GGovernment's evaluation process. Such communications mustshall not be used to cure proposal deficiencies or material omissions, materially alter the technical or cost elements of the proposal, and/or otherwise revise the proposal, but may (i) address ambiguities in a proposal or other concerns (i.e. perceived deficiencies, weaknesses, errors, omissions, or mistakes, and (ii) be considered in rating proposals for the purpose of establishing the competitive range. Communications must be held with offerors whose past performance information is the determining factor preventing them from being placed within the competitive range. Such Ccommunications mustshall address adverse past performance information to which an offeror has not had a prior opportunity to respond and when Communications with offerors whose it is uncertain whether such offeror should be excluded or included in the competitive range. exclusion from, or inclusion in, the competitive range is uncertain.~~

(3) ~~Negotiations.~~ Negotiations are exchanges between the ~~G~~overnment and offerors that are undertaken with the intent of allowing the offeror to revise its proposal. These negotiations may include bargaining. Bargaining ~~may include~~ includes persuasion, alteration of assumptions and positions, give-and-take, and may apply to price, schedule, technical requirements, type of contract, or other terms of a proposed contract. ~~When negotiations are conducted in a competitive procurement, such as in competitive sealed proposals, they takes place. When negotiations are conducted in a competitive procurement, they take place~~ after the establishment of the competitive range and are called discussions. ~~—~~

~~(4) Discussions should be are tailored to each offer and mustshall be conducted with each offeror in the competitive range.~~

~~(4) Subject to XXX, discussions mustshall provide each offeror still being considered for award an opportunity to respond to deficiencies, significant weaknesses, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The Director or designee may discuss other aspects of a proposal an offer, that in the opinion of the Director or designee, could be altered or explained to enhance materially the offer's potential for award.~~

~~(5-) The Director or designee is not required to discuss every area where an offer could be improved. The scope and extent of discussions are a matter of Director judgment for the Director or designee to exercise. —~~

~~(6-) The GGovernment may, when the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the GGovernment may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design), that their offers would be more competitive if the excesses were removed, and the offered price decreased. —~~

~~(7-) If, after discussions have begun, an offeror originally in the competitive range is no longer considered to be among the most highly rated offerors being considered for award, that offeror may be eliminated from the competitive range whether all material aspects of the offer have been discussed, or whether or not the offeror has been afforded an opportunity to submit a revision. —~~

~~(i) Limits on Exchanges. —~~

~~(1) In conducting discussions, GGovernment personnel must shall not engage in conduct that:~~

~~(i) —~~

~~Reveals —an offeror's technical solution, including any information that would compromise an offeror's intellectual property to another offeror; —~~

~~(ii) Reveals the names of individuals providing reference information about an offeror's past performance; or —~~

~~(iii) Reveals an offeror's price without that offeror's permission. However, the Director may inform an offeror that its price is considered by the GGovernment to be too high, or too low, and reveal the results of the analysis supporting that conclusion. It is permissible, at the GGovernment's discretion, to indicate to all offerors the cost or price that the GGovernment's price analysis, market research, and other reviews have identified as reasonable. —~~

~~Reveals the names of individuals providing reference information about an offeror's past performance. —~~

~~there shall be no disclosure of any information derived from proposals submitted by competing offerors. —~~

~~(-) Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid document, or insignificant mistakes that can be waived or corrected without prejudice to other bidders; that is, the effect on price, quantity, quality, delivery, or contractual conditions is negligible. The procurement officer may waive such informalities, in writing, or allow the bidder to correct them depending on which is in the best interest of the Commonwealth. —~~

(j) Award.

(1) -Award may be made without discussions or negotiation. However, offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion or negotiation. ~~if the solicitation states that the Government intends to evaluate offers and make an award without discussions. If the solicitation contains such a notice and the Government determines it is necessary to conduct discussions after the receipt of offers, the Director or Expenditure Authority must document the rationale for doing so in the contract file. Discussions must be As provided in the request for proposals, discussions may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing offerors.~~

(2) Award.—Award ~~shall~~ be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the ~~government~~ Government taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria ~~may~~ be used in the evaluation and the contract file ~~shall~~ contain the basis on which the award is made. Within three working days after the date of contract award, the ~~P&S~~ Director shall provide written notification to each unsuccessful offeror (unless pre-award notice was given under § 70-30.3-210(f)). The notice ~~shall~~ include, as applicable:—

(i) ~~The number of offerors solicited;~~

(ii) ~~The number of proposals received;~~

(iii) ~~The name and address of each offeror receiving an award;~~

(iv) ~~The items, quantities, and unit prices of each award (if the number of items or other factors makes listing unit prices impracticable, only the total contract price need be furnished); and~~

(v) ~~In general terms, the reason the offeror's proposal was not accepted, unless the price information in item (h)(4) of this subsection readily reveals the reason.~~ In no event ~~may~~ an offeror's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other offeror.

(k) Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract except where the Director or expenditure authority finds it would be unconscionable not to allow the mistake to be corrected, and such determination is reviewed and approved by the Attorney General.

§ 70-30.3-215 Circumstances Permitting Other than Full and Open Competition

(a) The following ~~procurement may be made~~ procurement methods permit contracting without the use of ~~using~~ full and open competition:—

- (1) Small ~~Purchases purchases of Equipment~~ (§ 70-30.3-220);
- (2) Sole ~~Ssource P~~procurement (§ 70-30.3-225);
- (3) Emergency ~~P~~procurement (§ 70-30.3-230);
- (4) Expedited ~~P~~urchasing in ~~S~~pecial ~~C~~ircumstances (§ 70-30.3-235);
- (5) Software Purchases (§ 70-30.3-320); and
- (6) Purchases from the United States General Services Administration (GSA);

(b) Use of the methods in (a)(2), (a)(3), and (a)(4) above is subject to the following requirements.

(1) Officials with expenditure authority, before executing the contract, ~~shall~~shall justify to the ~~P&S Director~~Director in writing the following:

(i) The need for contracting, the purpose of the contract, how the expected outcome would help the agency achieve its objectives, and that the services do not unnecessarily duplicate any previously performed work or services.

(ii) The non-availability of resources within and without the agency;

(iii) Vendor qualifications. The official with expenditure authority shall review any contractor evaluation on file with the ~~P&S Director~~Director. For professional services contract, a completed resume for each contractor participant who will exercise a major role in the completion of the contract will be required; and

(iv) Reasonableness of price. No presumption of reasonableness shall be attached to the incurring of costs by a contractor. The following factors will be used in determining whether costs are justified: cost information in sufficient detail to support and justify the contract; cost information for similar services, with differences noted and explained; and special factors affecting the costs under the contract. For contract amendments, the agency shall examine price considerations in the same manner as one would examine them for a basic contract. If the independent government ~~Government estimate appears to be defective, other means of comparison, such as a history of contracts with similar requirements, or current market prices, shall be used.~~

~~Reasonableness of price shall be determined in accordance with Part 800 Price and Cost Analysis. No presumption of reasonableness shall be attached to any contract. the incurring of costs by a contractor. The following factors will be used in determining whether costs are justified: cost information in sufficient detail to support and justify the contract; cost information for similar services, with differences noted and explained; and special factors affecting the costs under the contract. For contract amendments, the agency shall examine price considerations in the same manner as one would examine them for a basic contract. If the independent government estimate appears to be defective, other means of comparison, such as a history of contracts with similar requirements, or current market prices, shall be used.~~

(v) Documentation of the above should be contained in a form prescribed by the ~~P&S~~ Director.

(2) If the ~~P&S Director's written determination was is that~~ the request for contract execution was not justified based on an~~the~~ analysis of items in subsection (b)(1) above, ~~he shall promptly notify then~~ the Director shall promptly notify the official with the expenditure authority ~~shall be promptly notified in writing of the grounds~~grounds for denial. ~~disapproval in writing.~~

(3) ~~When a purchase is to be made from GSA under subsection (a)(6) above, a purchase order that is signed by the Director may be used in lieu of a contract.~~

§ 70-30.3-220 Small Purchases

~~(a) Any procurement that does not exceed \$15,000 in the amounts established herein may be made in accordance with these small purchase procedures of this subsection. to~~ Purchases that use Government-sourced funds (local funds), or any combination of both local and federal funds, may be made according to the small purchase procedures of this subsection:

~~(1) Pursuant to § 70-30.3-120 Split Contracts, procurement requirements shall not be artificially divided so as to constitute a small purchase.~~

~~For is less than or equal to \$5,000~~ For purchases that do not exceed \$10,000, at least one price quote shall be obtained. However, the Director may require the expenditure authority to obtain more than one price quote.

~~(2) A blanket purchase order may be used to make purchases without securing a price quote when the purchases do not exceed \$1000. The goods or services that may be purchased under a blanket purchase order must be defined (i.e. office supplies) and shall not be used for equipment. The expenditure authority shall promptly submit to the Director copies of receipts for all purchases made under a blanket-purchase order. The Director may instruct the expenditure authority to explain the need for the goods or services and how the prices paid were reasonable.~~

~~(3) For purchases that exceed \$10,000, but which are less than or equal to \$50,000, a minimum of three vendors shall be solicited to submit written or electronic quotations. The quotations shall be recorded and placed in the procurement file. If fewer than three vendors submit quotations, the expenditure authority shall certify, in writing, to the Director that fewer than three vendors responded and shall provide written proof of the request. If fewer than three of the solicited vendors submit quotes, the Director may either approve the request or instruct the expenditure authority to solicit additional quotes.~~

~~(4) The Director shall limit to \$50,000 per fiscal year the total amount of purchase orders, made in accordance with the small purchase procedures of this subsection (a), that the Division of Procurement Services issues to any non-governmental vendor on behalf of a particular agency or department, unless the Secretary of Finance and the Attorney General approves of the proposed expenditures that would exceed the limit.~~

~~(b) Purchases that use only federal funds may be made according to the small purchase procedures of this subsection:~~

~~(1) For purchases that do not exceed \$10,000, at least one price quote shall be obtained. However, the Director may require the expenditure authority to obtain more than one price quote.~~

~~(2) For purchases that exceed \$10,000, but which are less than or equal to \$250,000, a minimum of three vendors shall be solicited to submit written or electronic quotations. The quotations shall be recorded and placed in the procurement file. If fewer than three vendors submit quotations, the expenditure authority shall certify, in writing, to the Director that fewer than three vendors responded and shall provide written proof of the request. If fewer than three of the solicited vendors submit quotes, the Director may either approve the quote or instruct the expenditure authority to solicit additional quotes.~~

~~the official with expenditure authority must obtain at least one quote. (b) Bidding The use of a competitive procedure for full and open competition Competitive price quotations is not required for procurement that is under \$3,000 \$5,000 or less.~~

~~(c) Generally, for p For small procurement purchases over \$5,000 that does not exceed over \$5,000 and less than \$15,000, at a minimum of three quotes must be obtained businesses shall be solicited to Fewer than three quotes may be acceptable when certifies, quotes were requested from at least three vendors when only one or two of the vendors provided the requested quote. The expenditure authority n and submit written or electronic quotations that are recorded and placed in the procurement file. If fewer than three businesses submit quotations, the expenditure agency shall certify, in writing, to the Director of Procurement and Supply that fewer than three potential sources bidders responded. The expenditure agency shall and provided written proof of the solicitation the request. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$2,500 to \$10,000. Any price quotations obtained must be written, documented, and submitted to the P&S Director for approval.~~

~~Bidding is not required but is encouraged for procurement over \$2,500 and under \$10,000. The official with expenditure authority must obtain price quotations from at least three vendors and base the selection on competitive price and quality for procurement valued at \$2,500 to \$10,000. Any price quotations obtained must be written, documented, and submitted to the P&S Director for approval.~~

~~(d) Purchase orders may be used utilized for small purchaser's purchases made pursuant to subsections (b) and (c) of this section.~~

~~(e) Any lease or purchase of vehicles shall be procured pursuant to § 70 30.3 315. (c) A purchase order may be used to make purchases from the United States General Services Administration (GSA), including purchases that exceed \$250,000. When purchasing from GSA, at least one quote shall be obtained.~~

~~(d) Procurement requirements shall not be artificially divided so as to constitute a small purchase.~~

~~Any lease or purchase of machinery and equipment that exceeds in excess of \$5,000 must shall be procured pursuant to § 70 30.3 205 or another other applicable provisions of the regulations in this subchapter.~~

~~(f) In order to promote price competition and the equitable distribution of small purchases among qualified vendors, the no expenditure authority shall not authorize more than \$1514,000,999 in small purchases to any one vendor during a fiscal year without prior approval from the Director.~~

~~(f) The regulations in this subchapter apply to every expenditure of public funds irrespective of source or dollar amount.~~

§ 70-30.3-225 Sole-Source Procurement

(a) A contract may be awarded for a supply, service, or construction without competition ~~when:~~

~~(1) When:~~

~~(1) The Director determines in writing, after reviewing the expenditure authority's written justification pursuant to § 70-30.3-215-(b), that there is only one source for the required supply, service, or construction; and provides detailed, written documentation of the process through which this determination was made; or~~

~~(2) The purpose is to obtain ~~e~~For the purpose of procuring equipment ~~and~~ or services identified as interoperable for the use of enhancing and protecting the Commonwealth homeland security from suppliers determined capable to deliver such equipment ~~or and~~ services for the purpose specified ~~and~~ or for purposes relating to the needs of agencies designated as homeland providers; or~~

~~(3) To obtain professional services for ~~P~~the purpose professional services are needed to ~~of~~ facilitating the process of obtaining needed critical infrastructure funding ~~in order to~~ harden and enhance the capability of protecting critical infrastructure of the Commonwealth; or~~

~~(4) ~~P~~To obtain professional services are needed for the purpose of facilitating the establishment of a unit authorized in a federal defense appropriation act; or~~

~~(5) ~~T~~Solely for the purpose is to ~~of~~ obtain ~~ing~~ expert witnesses for litigation; or~~

~~(6) The purposes is to obtain ~~For~~ legal services; or~~

~~(7) The purpose is to procure ~~For~~ policy consultants of the Governor, Lt. Governor, or and presiding officers of the Legislature;~~

~~(8) The purpose is to obtain the services provided by lecturers, speakers, trainers, or facilitators when the vendor uses specialized training methods or techniques or has expertise in the subject matter; ~~or~~ matter; ~~or~~ or~~

~~(9) The purpose is to purchase registration or workshop fees for conferences or training.~~

(b) For any sole-source procurement pursuant to subsection (a)(1), a written justification for sole-source procurement ~~shall~~ shall be prepared by the official with expenditure authority and submitted to the Director. ~~—~~ This written justification ~~shall~~ shall contain the specific unique capabilities required; the specific unique capabilities of the contractor; the efforts made to obtain competition; and the specific considerations given to alternative sources and specific reasons why alternative sources were not selected.

(c) For any sole source procurement pursuant to subsections (a)(2), (a)(3) or (a)(4), the official with expenditure authority shall provide a written copy of the applicable federal grant or act under which the services are authorized or required.

~~(d) The price paid for any supply, service, or construction item in any sole source procurement shall be reasonable as determined by Part 800 Price and Cost Analysis.~~

§ 70-30.3-230 Emergency Procurement

(a) Notwithstanding any other provision of the regulations in this subchapter, the Director may make or authorize an emergency procurement when there exists ~~aa an unanticipated~~ threat to public health, ~~safetysafety~~, or welfare under emergency conditions. An emergency procurement ~~must~~shall be as competitive as practicable under the circumstances.

~~(b) An emergency condition is a situation that:~~

~~(1a) creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, typhoons, earthquakes, tsunamis, equipment failures, or such other reason as may be proclaimed by the Governor; and~~

~~(2b) When (The existence of such condition creates an immediate and serious need for supplies, services, or construction that cannot be met through normal procurement methods and the lack of which would seriously threaten:~~

~~(i1) The immediate functioning of the Commonwealth government;~~

~~(ii2) The preservation or protection of property; or~~

~~(iii3) The health or safety of any person.~~

~~(beb) The official with expenditure authority shall provide the Director with a A written justification justification for of the basis for the emergency procurement and justify the and for the selection of the particular contractor contractor on the basis of price and quality. or vendor must be made by the official with expenditure authority.~~

~~(e) If the Director is not satisfied with the justification, the Director shall disapprove the request and promptly notify the expenditure authority of the basis for the determination. If the P&S Director is satisfied, he shall state his the basis for the approval shall must be stated in writing.~~

~~(cd) Emergency procurement ~~shall~~shall be limited to those supplies, services, or construction items necessary to meet the immediate emergency. ~~However, emergency procurement shall must not be used for ordinary purchases that were not executed in a timely manner by the expenditure agency.~~~~

~~(e) Nothing in these Regulations shall be construed to limit the constitutional and statutory authority of the Governor to waive these regulations during a declared State of Emergency.~~

§ 70-30.3-235 Expedited Purchasing in Special Circumstances

(a) When special circumstances require the expedited procurement of goods or services, including professional services for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the Commonwealth, the official with expenditure authority may submit a ~~written~~ request to the Director that detailing the explains justification the need for that for an the expedited procurement without the use of full and open completionsolicitation of bids for proposals.

(b) The factors to be considered by the Director in approving or disapproving this request shall be:

(1) The urgency of the Government's need for the good or services; ~~especially if procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency supplies as described by the Office of Domestic Preparedness;~~

(2) The comparative costs of procuring the goods or service from a sole source as evidenced through the submission of price quotations or through the competitive process;

(3) The availability of the goods or service in the Commonwealth and the timeliness in acquiring it; and

(4) Any other consideration that factors establishes establishing the proposed expedited procurement to be in the best interest of the Commonwealth Government's best interest.

(c) Upon the Director's detailed written determination that the factors in (b) above justify an expedited purchase, the Division of Procurement Services shall process the necessary documents and assist the official with the expenditure authority in procuring the required goods or services in the most efficient manner.

(d) If the Director determines that the request for the expedited procurement does not meet the criteria in (b) above, then the Director shall promptly notify the official with the expenditure authority the basis for such determination. e authority shall be promptly notified in writing of his the basis for disapproval in writing.

(e) The expedited procurement shall be as competitive as practicable under the circumstances.

(f) The total amount of goods or service that may be approved under this section shall not exceed \$5025,000, ~~except when such goods or services are procured for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the Commonwealth including procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency medical supplies as described by the Office of Domestic Preparedness. except when such goods or services are procured for the purpose of facilitating the process of obtaining needed critical infrastructure funding in order to harden and enhance the capability of protecting critical infrastructures of the Commonwealth including procuring vehicles and equipment specifically designed for chemical, biological, nuclear exposure and bomb detection and critically needed emergency medical supplies as described by the Office of Domestic Preparedness.~~

§ 70-30.3-236 Request for Information

(a) A request for information is a solicitation used for planning purposes. The use of a request for information is appropriate when the government Government does not intend to award a contract on the basis of based on the solicitation or to otherwise pay for the information solicited.

~~(b) The request for information shall state that responses will be treated as information only and that no contract award will be made on the basis of based on the solicitation.~~

Subpart B — Cancellation of ~~Solicitation Invitation for Bids and Request for Proposals~~

§ 70-30.3-240 Cancellation

(a) ~~Any solicitation invitation for bids or request for proposals~~ may be canceled, and any and all ~~offers or proposals may be rejected bids or proposals may be rejected~~, when such action is determined in writing by the ~~official with expenditure authority and approved by the P&S Director to be in the Commonwealth's best interest of the Government of the government Commonwealth~~ based on:

- (1) ~~(a)~~ ——— Inadequate or ambiguous specifications contained in the solicitation;
- (2) ~~(b)~~ ——— Specifications which have been revised;
- (3) ~~(c)~~ ——— Goods or services being procured which are no longer required;
- (4) ~~(d)~~ ——— Inadequate consideration given to all factors of cost to the ~~government Government~~ in the solicitation;
- (5) ~~(e)~~ ——— Bids or proposals received that indicate that the needs of the ~~government Government~~ can be satisfied by means of a less expensive good or service;
- (6) ~~(f)~~ ——— ~~Prices that exceed All offers with acceptable bids or proposals received are higher than fifteen (15) percent of available funds; an the allocated anticipated budget at unreasonable prices;~~
- (7) ~~(g)~~ ——— ~~Prices offered were Bids were~~ collusive; ~~or or~~
- (8) ~~The Director's determination that (h) Cancellation is determined to be determined to be in the best interest of the Commonwealth's best interest government of the Government; or or~~
- (9) ~~More than 65 months has passed since the solicitation's closing date closing date for bids or proposals; or~~

~~(b) Each solicitation issued by the Commonwealth must shall state that the Government may cancel the solicitation may be cancelled as provided in this part.~~

~~(c) Expiration: All bids or proposals expire after 180 days from the close of the solicitation, and are no longer acceptable longer able to be accepted unless the Director grants an extension request. The Director may grant an extension when the expenditure authority submits a request prior to the expiration. In no event may an extension be permitted when the time between the closing of the solicitation and notice of award exceed one year. Requests for an extension to the~~

~~period for acceptance must be made to the Director prior to the expiration of the 180 days, but shall not exceed 365 days in total.~~

Subpart C - Qualifications and Duties

§ 70-30.3-245 Responsibility ~~Determination of Bidders and Offerors~~

(a) Awards ~~, including change orders, shall~~ be made only to responsible contractors. To be determined responsible, a ~~prospective~~ contractor ~~must~~ shall:

- (1) ~~Have For service, construction and A&E contracts, must have~~ adequate financial resources to perform the contract, or the ability to obtain them;
- (2) Be able to comply with the required delivery or performance schedule;
- (3) Have a satisfactory performance record;
- (4) Have a satisfactory record of integrity and business ethics;
- (5) Have the necessary organization, experience, and skills, ~~-(or the ability to obtain them),~~ required to successfully perform the contract;
- (6) Have the necessary production, construction, and technical equipment and facilities, or the ability to obtain them; and
- (7) Be otherwise ~~qualified and~~ eligible to receive an award under applicable laws and ~~regulations~~ rules.

(b) Obtaining information. Prior to award, the ~~P&S~~ Director shall obtain relevant information from the ~~prospective contractor bidder or offeror~~ necessary ~~, in light of the award to be made,~~ to make a responsibility ~~determination of responsibility~~ using the factors in subsection (a) above. The unreasonable failure of a ~~prospective contractor bidder or offeror~~ to promptly supply information in connection with an inquiry with respect to responsibility ~~is~~ may be grounds for a determination of non-responsible determination ~~with respect to that bidder or offeror.~~

(c) Right of ~~non-~~disclosure. Information furnished by a ~~prospective contractor bidder or offeror~~ pursuant to subsection (b) ~~must~~ shall not be disclosed outside of the Division of Procurement Services ~~of Procurement and Supply~~ office of the P&S Director ~~and~~ must ~~shall not be, or disclosed by any~~ other ~~Division employee or government official involved~~ without the contractor's prior consent. ~~by the bidder or offeror.~~

(d) ~~Non-responsibility determination. When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, a written determination shall be signed by the P&S Director stating the basis for the determination and a copy provided to the contractor. and Non-responsibility determination. When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, a written determination shall be signed by the Director stating the basis for the determination and this shall be placed in the contract file. A copy of the Director's non-responsibility determination letter shall be provided to the contractor. Before this non-responsibility determination is be placed in the contract file, the contractor shall be afforded the right to an appeal of this final decision pursuant to § 70-30.3-505.~~

~~Prequalification Procedures~~

§ 70-30.3-250 Prequalification of Sources Invitation for Prequalification Pre-qualified Bidder Lists

(a) Prequalification of sources may be used when the Director determines in writing that the proposed procurement acquisition is of an urgency or complexity that requires prequalification to ensure timely and efficient acquisition of goods or services, including construction, and architect-engineer services.

~~to provide the required goods or services (A) Applicability. An invitation for prequalification may be used when prequalification is necessary to ensure timely and efficient acquisition of goods or services, including construction, architectural and engineering services. The Director must authorize the use of prequalification by determining, in writing, that a construction project is of an urgency or complexity that requires prequalification.~~

~~(A) Prequalification results in a list of sources determined to be qualified to perform a specific construction contract and limits offerors to those with proven competence to perform in the required manner. (b) Procedure. An requalification invitation for pPrequalifications shall be solicited as an invitation for prequalification and shall follow competitive sealed proposal (§ 70-30.3-210) procedures. The invitation shall contain evaluation criteria that are essential to the proposed procurement and shall describe the prequalification program (i.e., description of projects for which participation of prequalified contractors will be solicited) in sufficient detail to allow participation by potential contractors. In no event may a contractor be allowed to prequalify after the due date and time for prequalification has expired. (IFP) must be developed and public notice provided in accordance with according to 1 XXX. proposed procurement must may has expired.~~

(c) Except as provided in this section, the acquisition of the required goods or services from prequalified sources shall be solicited using follow competitive sealed bidding procedures (§ 70-30.3-205) or competitive sealed proposal procedures (§ 70-30.3-210). However, advertisement requirements are inapplicables (i.e. the invitation for bids shall be sent only to the prequalified contractors).

(d) When soliciting procuring architect-engineer services from prequalified sources, the Director shall e-ensure that that the evaluation criteria and evaluations, discussions, and negotiations selection are procedure is conducted in accordance with § 70-30.3-305.

(e) Prequalification status will result in the prequalified contractor to be determined responsible under § 70-30.3-245. based on or provided

(f) The Director shall certify the prequalified source list for acquisitions use, not to exceed a duration of eighteen months from the date of prequalification inclusive of change orders. —

(g) Prequalified sources shall be filed with the Division of Procurement Services no more than fourteen days after selection, and selection and shall be made available for public inspection.

~~(f) Procedure. An Invitation for Prequalification (IFP) must be developed and public notice provided according to XXX.~~

~~(g) Pre-Qualification Criteria. The invitation for prequalification must contain evaluation criteria that are essential to the contemplated acquisition.~~

~~(h) Prospective suppliers of goods or services may be pre-qualified when determined necessary by the P&S Director. In no event will bidders be allowed to qualify after the pre-qualification opening.~~

~~(i)~~

~~Procedure. Solicitation for a Pre-Qualified Bidder List shall follow the competitive procedure provided for in § 70-30.3-210, Competitive Sealed Proposals. Opportunity to qualify shall be afforded to all suppliers.~~

~~Certification. The Director will certify the prequalified source bidder list for use, not to exceed eighteen (18) months from the date of certification.~~

~~Use of Source Bidder List. A prequalified source bidder list shall be used for the solicitation of goods or services, including construction, architectural, or engineering services following the procedures set out in § 70-30.3-205 or § 70-30.3-210, except the publications and notice procedures in § 70-30.3-201 (b) and (c) are not used.~~

- ~~1. Goods or services solicited through a pre-qualified source bidder list s must be filed 14 days in advance of selection with the Division Office of Procurement and Supply and made available for public inspection.~~
- ~~2. Results from source bidder list solicitations must be filed with the Division of Office of Procurement and Supply no more than 14 days after selection, and shall be made available for public inspection.~~

Subpart D - Types of Contracts

§ 70-30.3-255 Permissible Types of Contracts

Government contracts ~~shall~~ **shall** utilize a firm fixed price unless the use of a cost reimbursement contract is justified under § 70-30.3-260. Government contracts ~~shall~~ **shall** also use definite-quantity contracts unless a requirements contract is justified under § 70-30.3-265. Use of cost-plus-a-percentage-of-cost ~~or and~~ percentage of construction cost methods of contracting are prohibited.

§ 70-30.3-260 Cost-~~R~~ reimbursement Contracts

(a) Policy. Cost-reimbursement contracts ~~must~~ **shall** contain a ceiling which the contractor shall not exceed without the recommendation of the official with expenditure authority and ~~Director's approval.~~ **by the P&S Director.**

(b) Application. A cost-reimbursement contract may be used when the ~~P&S~~ Director attaches to the contract a written determination ~~, with explanation of specific factors evaluated,~~ that:—

(1) Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract; and

(2) Use of a cost reimbursement contract is likely to be less costly to the ~~government~~ Government than any other type due to the nature of the work to be performed under the contract.

(c) Limitations.

(1) A cost-reimbursement contract may ~~only~~ only be used only when the ~~P&S~~ Director determines that the contractor's accounting system is adequate for determining costs applicable to the contract, and ~~government~~ Government surveillance in the form of a construction management contract will be obtained to ensure the use of efficient methods and effective cost controls in the performance of the contract.

(2) The use of cost-reimbursement contracts is prohibited for the acquisition of commercially available items.

(d) ~~Cost-Plus-Fixed-Fee~~ Contracts.

(1) Description. A cost-plus-fixed-fee contract is a cost-reimbursement contract that provides for payment to the contractor of a negotiated fee that is fixed at the inception of the contract. The fixed fee does not vary with actual ~~cost, but~~ cost but may be adjusted ~~as a result of~~ because of changes in the work to be performed under the contract, authorized pursuant to § 70-30.3-410(a).

(2) Application.

(i) A cost-plus-fixed-fee contract is suitable for use when the conditions of § 70-30.3-260(b) are present and the contract is for the performance of research or preliminary exploration or study, and the level of effort required is unknown.

(ii) A cost-plus-fixed-fee contract normally ~~must~~ shall not be used in development of major systems once preliminary exploration, studies, and risk reduction have indicated a high degree of probability that the development is achievable and the ~~government~~ Government has established reasonably firm performance objectives and schedules.

(3) Limitations. No cost-plus-fixed-fee contract ~~can~~ shall be awarded unless the official with expenditure authority complies with all limitations in § 70-30.3-260(c).

~~(1)~~ Before any payment is released on a cost-reimbursement contract as defined in this section, the contractor ~~must~~ shall provide detailed billing justification including cost paid for materials, ~~rents~~ rents, and labor.

§ 70-30.3-265 Requirements Contracts

~~(ae)~~ Application. A requirements contract may be appropriate for acquiring supplies or services when the ~~government~~ Government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated ~~government~~ Government activities will need during a definite period.

(ba) For the information of ~~contractors-offerors and contractors~~, the official with expenditure authority shall state a realistic estimated total quantity in the solicitation and resulting contract. This estimate is not a representation to a ~~n-offeror or~~ contractor that the estimated quantity will be required or ordered, or that conditions affecting requirements will be stable or normal. The official with expenditure authority may obtain the estimate from records of previous requirements and consumption, or by other means, and shall base the estimate on the most current information available.

(cb) The contract ~~shall~~shall state, if feasible, the maximum limit of the contractor's obligation to deliver and the ~~G~~government's obligation to order. The contract may also specify maximum or minimum quantities that the ~~government-Government~~ may order under each individual order and the maximum that it may order during a specified ~~period of time~~period. The contract ~~shall~~shall specify that failure of the ~~government-Government~~ to order such estimated minimum or maximum quantities will not entitle the contractor to any equitable adjustment in unit price.

~~(e) Application. A requirements contract may be appropriate for acquiring supplies or services when the government anticipates recurring requirements but cannot predetermine the precise quantities of supplies or services that designated government activities will need during a definite period.~~

(d) Duration. A requirements contract ~~shall~~shall not be permitted for a term that is longer than two years, inclusive of change orders.

Subpart E - Inspection and Audit

§ 70-30.3-270 Right to Inspect Place of Business and Records

(a) ___ The ~~government~~Director or ~~their~~designee may, at a reasonable time, inspect the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the ~~G~~government.

(b)___ The ~~-contractor shall provide the Director with access to and the right to examine and copy any records, data, or papers relevant to a government-Government contract for a period of three years after the final payment under the contract. -~~
~~Director or their designee may, at reasonable times, inspect and review the financial and personnel records, receipts, and all other documents of a contractor or any subcontractor that are specifically related to the performance of any contract awarded by the Commonwealth for a period of three years after the final payment under the contract or grant.~~

§ 70-30.3-275 Right to Audit Records

As required by § 404 of Public Law No. 3-91 (1 CMC § 7845), the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth

with access to and the right to examine and copy any records, data, or papers relevant to a ~~government~~ Government contract or grant for a period of three years after the final payment under the contract or grant. A clause to this effect ~~shall~~ shall appear in all ~~government~~ Government contracts and obligations.

Subpart F - Reports and Records

§ 70-30.3-280 Report of Anti-~~C~~ompetitive or Deceptive Practices

(a) When for any reason ~~any~~ person suspects the following practices (which are more fully defined by 4 -CMC § 5101 to § 5206) are occurring among bidders, offerors, contractors, or subcontractors, the Director shall transmit a notice of the relevant facts ~~shall be transmitted by the P&S Director~~ to the Attorney General without delay:

- (1) Unfair methods of competition;
- (2) Deceptive acts; ~~or~~
- (3) Unfair business practices; ~~or~~

~~(4) Any act or practice defined in at 4 CMC § 5101 through § 5206.~~

~~(b) These acts are more fully defined at 4 CMC § 5101 through § 5206.~~

§ 70-30.3-285 Retention of Procurement Records

(a) The Director shall retain a All procurement records ~~shall be retained by the P&S Director~~ for a period of 5 years after the completion of construction, or full delivery of ~~the~~ goods or services under a the contract. The official with expenditure authority shall also retain ~~keep~~ copies of all procurement records for their respective agencyies.

(b) The ~~P&S~~ Director shall maintain a record listing all contracts for a minimum of five years. The records ~~shall~~ shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; ~~and~~
- (3) A listing of the supplies, services, or construction procured under each contract; and
- (4) A listing of contracts per agency and by fiscal year.

(c) All procurement records, except those designated herein as not subject to disclosure, ~~shall~~ shall be available to public inspection in accordance with the ~~the~~ Open Government Act.

Part 300 - Specialized Procurement —

~~Procurement of Construction and Architect Engineer Services, Professional Services, Vehicles and Special Conditions for Computer Software and Hardware~~

§ 70-30.3-301 Construction Procurement

(a) Invitation for bids. ~~Invitation for Bids.~~ An invitation for bids ~~shall~~ ould be used in construction procurement unless the -Director ~~expenditure authority~~ determines in writing that it is in the best interest of the Commonwealth to use the competitive scaled proposal

~~procedures (as , including design/build by Department of Public Works, as specified in § 70-30.3-210) .-~~

(1) Contents. The invitation for bids ~~shall~~shall be prepared in accordance with § 70-30.3-205~~(b)~~. In addition, the following ~~items shall~~shall be included in the invitation for bids:

- (i) ~~Notice to Bidders.~~ General information regarding the project;
- (ii) ~~Instructions and tructions to Bidders.~~ Information on the preparation of bids, bid security requirements and forms and certifications that ~~must~~shall be submitted with the bid;
- (iii) ~~General Conditions.~~ Standard contract clauses governing the performance of work;
- (iv) ~~Special Conditions.~~ Special contract clauses, depending on the nature and dollar amount of the work to be performed; and
- (v) Technical ~~Specifications.~~specifications ~~Specifications~~ governing the technical aspects of the work to be performed.

(b) Bid Security.

(1) ~~Requirement.~~ Bid security ~~shall~~is ~~must be~~ required for all competitive sealed bidding construction contracts where the price is estimated by the ~~P&S~~ Director to exceed \$25,000.00 or when the ~~P&S~~ Director determines ~~it is in that the~~ requirement is in the best interest of the ~~Government~~Commonwealth. Bid security ~~shall~~shall be on a bid bond, in cash, by certified check, cashier's~~ss~~ check or other form acceptable to the ~~G~~overnment. A surety company ~~shall~~shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety ~~authorized by acceptable to the CNMI Department of Commerce the Attorney General.~~

(2) ~~Amount.~~ Bid security ~~shall~~shall be in an amount equal to at least fifteen percent of ~~the total amount of the bid priced~~ or ~~other~~ amount ~~that is~~as specified in the invitation for bids ~~depending upon the source of funding.~~

(3) ~~Rejection of Bid.~~ Failure to furnish bid security, when required by the invitation, ~~shall will~~must result in rejection of the bid as non-responsive.

(c) Contract Performance and Payment Bonds.

(1) When a construction contract is awarded ~~in excess of in excess of more than~~ \$25,000.00.00, the following bonds or security ~~shall~~shall be delivered to the ~~government~~Government and ~~will~~shall become binding on the parties upon the execution of the contract:

(i) A performance bond satisfactory to the ~~government~~Government pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the ~~G~~overnment, in an amount equal to one hundred percent of the price specified in the contract; and

(ii) A payment bond satisfactory to the ~~government~~Government pursuant to subsection (c)(2) below, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the ~~G~~overnment, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond ~~shall~~shall be in an amount equal to one hundred percent of the price specified in the contract.

(2) Acceptability of payment and performance bonds. The ~~P&S~~ Director shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation. Prior to the execution of the contract, the ~~P&S~~ Director shall require the selected contractor to submit: ~~—~~

(i) A current license from the bonding company showing that it has authority to issue bonds; ~~and~~

(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of each bond.

(3) A contractor ~~that~~ ~~submitting~~ an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the ~~P&S~~ Director, to substitute an acceptable bond prior to executing a contract. When evaluating payment and performance bonds, the ~~P&S~~ Director shall confirm the acceptability of the bonding company from other ~~government~~ Government agencies, such as the Insurance Office under the Department of Commerce.

(d) Suits on Payment Bonds; Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum(s) ~~justly due such person~~; provided, that: ~~however, that~~

(1) Any ~~any~~ person having a direct contractual relationship with a subcontractor, ~~of the contractor~~, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed.

(2) Such notice ~~shall~~ shall be served personally or ~~by mailing the same~~ by registered or certified mail, ~~postage prepaid~~, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(3) Where and When Brought. Every suit instituted upon a payment bond ~~shall~~ shall be brought in a court of competent jurisdiction for the Commonwealth. The obligee named in the bond need not be joined as a party in any such suit.

(e) Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract is subject to prior written certification by The Secretary of Finance as to the availability of funds that will be used for any increase in total contract amount. Every contract modification, change order, or contract price adjustment under a construction contract shall must be subject to prior written certification by the Expenditure Authority Secretary of Finance as to the effect of the contract modification, change order, or adjustment in contract price, on the total project budget or on the total contract budget. In the event that the certification discloses an resulting increase in the total project budget and/or the total contract budget, such contract modification, change order or adjustment in contract price shall must not be made unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract original budget as it existed prior to the price under consideration.

~~(2) provided, However, that with respect to the validity, as to the contractor, of any executed contract modification, change order or adjustment in contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.~~

§ 70-30.3-305 Architect-Engineer Services

~~(a) Procurement Method. Architect-engineer services shall be procured as provided in this section except when authorized as a small purchase, expedited, or emergency procurement or prequalification of sources.~~

~~(b) Acquisitions for architect-engineer services shall follow competitive sealed proposal procedures (§ 70-30.3-210) unless otherwise provided for herein.~~

~~(c) Contractors engaged in providing architect-engineer services may submit statements of qualifications and expressions of interests to provide architect-engineer services. These statements may be amended at any time by filing a new statement with the Division of Procurement Services.~~

~~(B) For architect-engineer services for public works or utilities, the contract price or the estimated cost and fee for production and delivery of designs, plans, drawings, and specifications shall not exceed 6 percent of the estimated cost of construction of the public work or utility, excluding fees.~~

~~Architect-engineer services shall be procured as c) Solicitations shall be conducted as a request for qualifications (RFQ) unless the Director provides written justification that it qualifies for another form of procurement. RFQ procedures shall follow § 70-30.3-210 (Competitive Sealed Proposals) unless otherwise provided for herein; provided in this section except when authorized as a small purchase, expedited, or emergency procurement.~~

~~(db) Policy. It is the policy to publicly announce all requirements for architect-engineer services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price.~~

~~(e) Solicitations shall be conducted as a request for qualifications (RFQ) unless the Director provides written justification that it qualifies for another form of procurement. RFQ procedures shall follow § 70-30.3-210 (Competitive Sealed Proposals) unless otherwise provided for herein;~~

~~(1) A solicitation shall be prepared which describes the Commonwealth's requirements and sets forth the evaluation criteria. It shall be distributed upon request and payment of a fee, if any.~~

~~(e2) Evaluation Criteria. The request for qualifications must include notice Qualifications must be d (1) ;(2) (3) (4) Government (5) (6) Any or uation the Director determines is in the Commonwealth's interest.~~

~~of any conference to be held and the criteria to be used in evaluating the statements of qualifications and performance data and selecting firms, including, but not limited to:~~

~~(i) Competence to perform the services as reflected by technical training and education; general experience; experience in providing the required services; and the qualifications and competence of persons who would be assigned to perform the services;~~

~~(ii) Ability to perform the services as reflected by workload and the availability of adequate personnel, equipment, and facilities to perform the services expeditiously; and~~

~~(iii) Past performance as reflected by the evaluations of private persons and officials of other governmental entities that have retained the services of the firm with respect to such factors as control of costs, quality of work, and an ability to meet deadlines.~~

~~(3) The solicitations for architectural and engineering services may contain a requirement that interested firms interested in providing the required services submit a supplemental statement of qualifications and performance data by a specified date. Such supplemental statement may include, but need not be limited to, the following information:~~

~~(i) The abilities, qualifications, and experience of all persons who would be assigned to provide the required services; and and~~

~~(ii) A listing of other contracts under which services or projects similar in scope, size, or discipline to the required services were performed or undertaken within a previous period of time, as specified in the solicitation.~~

(bee) Selection.

~~(1) The P&S Director and the Technical Services Division of the Department of Public Works shall jointly maintain files of current statements of qualifications of architect-engineer firms. Firms may submit statements of qualifications to the office of the Director of Procurement Services. These statements may be amended by submitting filing a new statement with the Division of Procurement Services.~~

~~(2) After public announcement of requirements for architect-engineer services, current statements shall be reviewed together with those that other firms submit in response to the announcement.~~

~~(3) Statements of qualifications shall be evaluations shall be conducted to determine the most most highly qualified architect-engineer firms.~~

~~(f) Architect-engineer firms shall be evaluated in terms of the following criteria:~~

~~(i) The professional qualifications necessary for the satisfactory performance of the required services;—~~

~~(ii) Specialized experience and technical competence in the type of work required, including, where appropriate, experience in energy conservation, pollution prevention, waste reduction, and the use of recovered materials;~~

~~(iii) Capacity to accomplish the work in the required time;~~

~~(iv) Past performance on contracts with Government agencies and private industry in terms of cost control, quality of work, and compliance with performance schedules;~~

~~(v) Location in the general geographical area of the project and knowledge of the locality of the project; provided, that application of this criterion leaves an appropriate number of qualified firms, given the nature and size of the project; and~~

~~(vi6) Any other evaluation criteria that the Director deems appropriate.~~

~~(c) Firms shall be ranked from highest qualified to least qualified. In the event that qualifications statements are received from less than three firms, the Director shall consider whether a reannouncement would be prudent. If the Director determines that a reannouncement is unlikely to result in additional statements of qualifications or is not in the Government's best interest, then less than three firms may be considered for award.~~

~~The P&S Director and the Technical Services Division of the Department of Public Works shall jointly maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirement for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. (d) Discussions shall be conducted with at least three of the most highly qualified firms (i.e. the top three firms) regarding contract requirements, concepts, technical approach, the relative utility of alternative methods, and feasible ways to achieve waste reduction and energy-efficiency in design. contract requirements and technical approach and selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the services required. Fee proposals may be solicited upon public announcement; however, this information shall not be considered in the selection of the most highly qualified firms. Such fee proposals may be used by the P&S Director to in determining a fair and reasonable contract price.~~

~~(d) Negotiation. The P&S Director shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the government. In determining what constitutes a fair and reasonable price to the government, the P&S Director shall consider factors such as the prices proposed by other firms responding to the solicitation. If a fair and reasonable price cannot be negotiated with the highest ranking qualified firm, then the P&S Director may select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon. (i) Government Cost Estimate For Architect-Engineer Work.~~

~~(a) An independent Government estimate of the cost of architect-engineer services shall be prepared and furnished to the contracting officer before commencing negotiations for each proposed contract or contract modification expected to exceed the simplified acquisition threshold. The estimate shall be prepared on the basis of a detailed analysis of the required work as though the Government were submitting a proposal.~~

~~(b) Access to information concerning the Government estimate shall be limited to Government personnel whose official duties require knowledge of the estimate. An exception to this rule may be made during contract negotiations to allow the contracting officer to identify a specialized task and disclose the associated cost breakdown figures in the Government estimate, but only to the extent deemed necessary to arrive at a fair and reasonable price. The overall~~

~~amount of the Government's estimate shall not be disclosed except as permitted by agency regulations.~~

~~(c) Negotiation.~~

~~(1) The Director or designee shall negotiate a contract beginning with the highest qualified architect-engineer firm until a mutually satisfactory contract is negotiated at a price determined to be fair and reasonable to the Government. The Director or designee shall request a proposal from the firm at the negotiation stage. If a contract cannot be negotiated with the highest-ranking firm, negotiations shall continue with the next highest-ranking firm. This procedure shall be continued and so on until a mutually satisfactory contract is has been negotiated. If negotiations fail with all selected firms, additional firms may be considered (i.e. five of the most highly qualified firms). the contracting officer shall refer the matter to the selection authority who, after consulting with the contracting officer as to why a contract cannot be negotiated, may direct the evaluation board to recommend additional firms in accordance with 36.602.~~

~~Before conducting negotiations, the Director may request a proposal from the firm. In determining what constitutes a fair and reasonable price to the Government, the Director may consider factors such as prices proposed by other firms responding to the solicitation. If a fair and reasonable price cannot be negotiated with the highest ranking qualified firm, then the Director may select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.~~

~~The contracting officer shall then initiate negotiations with the next firm on the final selection list. This procedure shall be continued until a mutually satisfactory contract has been negotiated. If negotiations fail with all selected firms, the contracting officer shall refer the matter to the selection authority who, after consulting with the contracting officer as to why a contract cannot be negotiated, may direct the evaluation board to recommend additional firms in accordance with 36.602.~~

~~(2)~~

~~(2) The contracting officer should ordinarily request a proposal from the firm, ensuring that the solicitation does not inadvertently preclude the firm from proposing the use of modern design methods.~~

~~(3) The contracting officer shall inform the firm that no construction contract may be awarded to the firm that designed the project, except as provided in 36.209.~~

~~(4) During negotiations, the Director or designee contracting officer should seek advance agreement (see 31.109) on any charges for computer-assisted design. When the firm's proposal does not cover appropriate modern and cost-effective design methods (e.g., computer-assisted design), the Director or designee contracting officer should discuss this topic with the firm.~~

~~(3) Because the selection of firms is based upon qualifications, the Director or designee shall consider the extent of any subcontracting. is an important negotiation topic. The clause prescribed at 44.204(b), Subcontractors and Outside Associates and Consultants (Architect~~

Engineer Services) (see 52.244-4), limits a firm's subcontracting to firms agreed upon during negotiations.

~~(46) If a mutually satisfactory contract cannot be negotiated, the Director or designee contracting officer shall obtain a written final proposal revision from the firm, and terminate negotiations and shall notify the firm of the termination notify the firm that negotiations have been terminated. The Director or designee contracting officer shall then initiate negotiations with the next firm on the final selection list. This procedure shall be continued until a mutually satisfactory contract is has been negotiated or until negotiations are terminated. If negotiations fail with all selected firms, the contracting officer shall refer the matter to the selection authority who, after consulting with the contracting officer as to why a contract cannot be negotiated, may direct the evaluation board to recommend additional firms in accordance with 36.602.~~

~~(b) No architect-engineer requirement may be fulfilled through the use of a prequalification contract (§ 70-30.3-250) or requirements contract (§ 70-30.3-265) that is estimated to exceed \$200,000 (including all options) and which is awarded to a single source unless the head of the agency or department determines in writing that:~~

~~(1) The work expected under the contract is so integrally related that only a single source can reasonably perform the work;~~

~~(2) Only one source is qualified and capable of performing the work at a reasonable price to the Government; or~~

~~(3) It is in the public's interest to award the contract to a single source due to exceptional circumstances.~~

~~(c) The determination of the agency or department head under subsection (b) of this section shall be subject to approval by the Director.~~

§ 70-30.3-310 Competitive Selection Procedures for Professional Services

(a) Procurement ~~M~~ethod. The services of accountants, physicians, or lawyers shall be procured through a request for proposals ~~under using the procedures provided by § 70-30.3-210 - or request for qualifications (RFQ), as provided in this section~~ except when authorized as a small purchase, emergency procurement, expedited procurement, or sole-source procurement. ~~The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.~~

~~(b) Policy. It is the policy to publicly announce all requirements for professional services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price. The P&S Director shall maintain files of current statements of qualifications of professional firms. Persons engaged in providing professional services may submit statements of~~

~~qualifications and expressions of interests providing such types of services. Persons may amend these statements at any time by filing a new statement.~~

~~(c) — Public Announcement and form of request for proposals. Adequate notice of the need for such services shall be given by the official with expenditure authority through a request for proposals pursuant to § 70-30.3-210. The request for proposals shall describe the services required, list the type of information and data required of each offeror, and state the relative importance of particular qualifications.~~

~~(d) — Pre Award Discussions Discussions. The official with expenditure authority may conduct discussions with any offeror who has submitted a proposal to determine such offerors' qualifications for further consideration. Discussions shall not disclose any information derived from proposals submitted by other offerors.~~

~~(be) Award. Award shall be made to the offeror determined in writing by the P&S expenditure authority and approved by the Director to be the best qualified based on the evaluation factors set forth in the request for proposals, and where compensation is determined to be, ~~and negotiation of compensation determined to be~~ fair and reasonable.~~

~~(c) Exchanges with offerors such as discussions and negotiations provided under the request for proposals procedures (§ 70-30.3-210) are permissible. All offerors will be accorded fair and equal treatment with respect to any opportunity for discussion or negotiation. If compensation cannot be agreed upon with the best qualified offeror then negotiations will be formally terminated with the selected offeror. If proposals were submitted by one or more other offerors determined to be qualified, negotiations may be conducted with such other offeror or offerors, in the order of their respective qualification ranking, and the contract may be awarded to the offeror then ranked as best qualified if the amount of compensation is determined to be fair and reasonable. However, the Commonwealth is not required to conduct discussions or negotiate with any or all qualified offerors and may award a contract to the highest ranked offeror without conducting discussions or negotiations. ~~cancel the procurement when determined to be in the best interest of the Commonwealth.~~~~

§ 70-30.3-315 Lease or Purchase of Vehicles

~~(a) Policy. Any lease or purchase of government Government vehicles shall be governed by this section. It applies to both the initial acquisition of vehicles and the renewal or extension of vehicle leases. The lease or purchase of vehicles shall be procured using an invitation for bids, ~~unless~~ bids unless it qualifies for other procurement methods. The Director shall establish standard vehicle specifications which shall be updated on a regular basis (not less frequently than every 2 years). All vehicles leased or purchased shall be procured in the name of the Government, and shall conform to CNMI and federal laws, including the CNMI Government Vehicle Act (1 CMC § 7406), and associated rules and regulations.~~

~~(b) Whether to Lease or Purchase. Agencies shall consider whether to lease or purchase vehicles based on a case-by-case evaluation of comparative costs and other factors. The~~

following factors are the minimum that shall be considered, and a record reflecting the application of these factors shall be provided in a form prescribed by the Director and shall be included in the file:

(1) Estimated length of the period in which the vehicle is to be used and the extent of use within that period.

(2) Financial and operating advantages of alternative types and makes of vehicles.

(3) Cumulative rental payments for the estimated period of use.

(4) Net purchase price.

(5) Maintenance and other service costs.

(6) The following additional factors shall be considered, as appropriate:

(i) Availability of purchase options;

(ii) Potential for use of the vehicle by other agencies after its use by the acquiring agency is ended;

(iii) Trade-in or salvage value;

(iv) Imputed interest; and

(v) Availability of a servicing capability; e.g., can the vehicles be serviced by the ~~government~~ Government or other sources if it is purchased?

(c) Purchase method. The purchase method is appropriate if the vehicles will be used beyond the point in time when cumulative leasing costs exceed the purchase costs.

(d) Lease Method. The lease method is appropriate if it is to the Government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances require immediate use of vehicles to meet program or system goals; but do not currently support acquisition by purchase.

(e) Lease with Option to Purchase. If a lease is justified, a lease with option to purchase is preferable. Generally, a ~~long-term~~ long-term lease shall be avoided, but may be appropriate if an option to purchase or other favorable terms are included. If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase. The option to purchase may only be exercised by a ~~government~~ Government entity. The expenditure authority shall notify the Director 30 days in advance if it does not intend to exercise the purchase option.

(a) Policy. All vehicle ~~leases and purchases are governed by this section,~~ including renewal or extension, or purchase of government vehicles shall be governed by this section

(b) Procurement Method. The competitive sealed bid method under ~~xxxxx~~ must be used to lease or purchase vehicles.

. It applies to both the initial acquisition of vehicles and the renewal or extension of vehicle leases. The lease or purchase of vehicles shall be procured using (1) Procurement shall be through an invitation for bids, unless it qualifies for other procurement another method.

(c2) The P&S Director shall establish standard vehicle specifications for passenger vehicles and light duty trucks that agencies and departments must use for during vehicle procurements. The Director shall, and which shall be update the standard vehicle specifications d on a regular basis (not less frequently no less than every 2 years).

~~(d3) — A solicitation acquisition that uses a model name description or other purchase description to specify a particular brand name, product, or feature of a product peculiar to one manufacturer is not normally allowed regardless of the number of sources solicited, except as provided for in § 30.3-205(e).~~

~~(e4) — All vehicles leased or purchased shall be procured in the name of the government, and shall conform to CNMI and federal laws, including the CNMI Government Vehicle Act (1-CMC § 7406), and associated rules and regulations.~~

~~(fb) — Whether to Lease or Purchase. Agencies shall consider whether to lease or purchase vehicles based on a case by case evaluation of comparative costs and other factors. The shall must provide a written evaluation, on a form the Director prescribes, of the following factors when deciding between a lease or purchase,; and a record reflecting the application of these factors shall be provided in a form prescribed by the P&S Director and shall be included in the file:~~

~~(1) — Estimated length of the period in which the vehicle is to be used and the extent of use within that period,;~~

~~(2) — Financial and operating advantages of alternative types and makes of vehicles,;~~

~~(3) — Cumulative rental payments for the estimated period of use,;~~

~~(4) — Net purchase price,;~~

~~(5) — Maintenance and other service costs,;~~

~~(6) — The following additional factors shall be considered, as appropriate, —~~

~~(i) — Availability of purchase options,;~~

~~(7ii) — Potential for use of the vehicle by other agencies after its use by the acquiring agency is ended,;~~

~~(8iii) — Trade in or salvage value,;~~

~~(9(iv) — Imputed interest; and, and-~~

~~(10v) — Availability of a servicing capability (, e.g., can the vehicles be serviced by the government or other sources if it is purchased?).~~

~~(gc) — Purchase method. The purchase of a vehicle is preferable over a lease method is appropriate if the vehicles will be used beyond the point in time when the expected cumulative leasing costs exceed the purchase costs.~~

~~(hd) — Lease Method. The lease of a vehicle method is preferable over a purchase appropriate if it is to the government's advantage under the circumstances. The lease method may also serve as an interim measure when the circumstances require immediate use of vehicles to meet program or system goals, ; but do not currently support procurement acquisition by purchase.~~

~~(ie) — Lease with Option to Purchase. If a lease is justified, a lease with option to purchase is preferable. Generally, a long term lease shall be avoided, but may be appropriate if an option to purchase or other favorable terms are included. If a lease with option to purchase is used, the contract shall state the purchase price or provide a formula which shows how the purchase price will be established at the time of purchase. The option to purchase may only be exercised by a~~

~~government entity. The expenditure authority shall notify the P&S Director at least 30 days in advance if it does not intend to exercise the purchase option.~~

§ 70-30.3-320 Computer Software ~~and Hardware~~

(a) Notwithstanding any other provision of these regulations, commercial computer software, including documentation, warranties, ~~subscriptions~~subscriptions, and related component may be procured pursuant to this part.

(b) Commercial computer software, including commercial computer software documentation and cloud computing services, may be acquired under a license customarily provided to the public to the extent such license is lawful and satisfies the Government's needs.

(c) In acquiring commercial software, the ~~government~~Government shall not generally require ~~offerors and~~ contractors to:

(1) Furnish technical information related to commercial computer software or commercial computer software documentation that is not customarily provided to the public;

(2) Transfer intellectual property rights or otherwise relinquish to, or otherwise provide, the ~~government~~Government the rights to use, modify, reproduce, release, perform, display, or disclose commercial computer software or commercial computer software documentation, except as mutually agreed to by the parties. With regard to commercial computer software and commercial software documentation, the Government shall have only those rights specified in the license therefor.

(d) Competitive bidding, or competitive procurement ~~is shall not be~~ required for commercial software, including Software-as-a-Service, upon a showing that:

(1) The software is advertised for sale to the public at prices which are readily determinable from public sources, including but not limited to, sources on the internet;

(2) Proof of contemporaneous pricing which is ~~actually available~~available to CNMI purchasers is supplied in the contract package; and

(3) The prices being compared ~~shown~~ are within 10% of the pricing selected, ~~or, or~~ the selected vendor will provide support for the software of a value which compensates for the difference in price.

(e) Competitive bidding ~~or~~ competitive procurement ~~is shall not be~~ required with respect to software for the following:

(1) Software purchased is an updated version of software previously purchased;

(2) An extension of the license for ~~previously purchased~~previously purchased software;

(3) An extension of maintenance services for ~~previously purchased~~previously purchased software; ~~and/or~~

(4) Computer hardware maintenance agreements for existing equipment.

(f) ___ Contracts for extensions of maintenance service agreements, license renewals, or updates to previously purchased software as provided for in § 70-30.3-320 (e) may proceed as a new

~~s~~Sole ~~s~~Source contract, § 70-30.3-225 (a)(1), or small purchase, as provided for in § 70-30.3-220.

(g) The purchase of computer hardware, software, and/or related services, which is/are purchased pursuant to a US General Services Administration (GSA) blanket contract that was negotiated by the federal government, ~~is mustshall be~~ presumptively concluded to ~~be in compliance with~~ follow the competitive procurement requirements of these Regulations. This presumption ~~shall~~ applies not only to commercially available products, but also to products which are designed, manufactured and/or assembled according to GSA specifications.

§ 70-30.3-325 Lease of Real Property

(a) ~~___~~ Description. This section defines the procedures by which the Commonwealth secures property for ~~government~~ Government use, such as office space, from ~~a~~ private property.

(b) ~~___~~ Procedure. An invitation for bids should be used to solicit a lease for real property unless the expenditure authority determines in writing that it is in the best interest of the Commonwealth to use the Competitive Sealed Proposals procedure under as specified in § 70-30.3-210. ~~Any occupancy greater than three months shall must follow this procedure regardless of price.~~

(c) ~~___~~ Six months prior to the expiration of a ~~lease for real property~~ lease for real property, the expenditure authority shall prepare the appropriate solicitation documents. ~~initiate competitive solicitation for a new lease.~~

(d) ~~___~~ Lease term. A lease of real property pursuant to a particular solicitation ~~shall~~ shall not exceed 10 years, inclusive of options for extension or renewal.

(e) ~~___~~ Certification of Funds. Leases governed by ~~this~~ se section ~~shall~~ shall clearly list both the value of the lease over its full term, and the amount to be appropriated each fiscal year.

(f) ~~___~~ Holdover Tenancy. If a lease expires prior to the ~~government~~ Government entity renewing or vacating the leased property, rent ~~shall~~ shall be due on a ~~month to month~~ month-to-month basis.

Part 400 ~~___~~ ~~Contract Terms and Administration~~ of Contracts of Contracts

§ 70-30.3-401 ~~Contract~~ Price and Payment Terms

(a) ~~___~~ Price. In executing contracts, agencies shall set the maximum amount that can be charged under the contract and disallow open-ended contracts, i.e., contracts which do not specify the maximum contract price. Whatever contract type is selected, agencies shall limit contracts to a fixed price or a ceiling price, and the contractor shall not exceed the price set unless a change

order is approved (See § 70-30.3-410, change order). Provided, however, in the case of contracts for legal or lobbying services obtained pursuant to a contingency fee agreement, the agency shall put a fixed price on any costs to be borne by the agency out of the general fund, including but not limited to any price to be charged by the contractor in lieu of a percentage of an award obtained as a result of because of the contractor's services.

(b) Payment Terms. Payments shall be made only upon submission of evidence of work performed and adherence to contract terms and specifications. Generally, a one-time payment shall be made after the official with expenditure authority has certified completion of work or delivery of goods or services. Other types of payments are as follows:

(1) Advance Payments. Advance payments shall be authorized only in certain circumstances as provided in (b)(1)(i), in (b)(1)(ii), or in (b)(1)(iii) below.

(i) The contractor fails to qualify as a responsible contractor due solely to the absence of financial capability, and it is justified under § 70-30.3-225 that the contractor is the only available source, subject to the following conditions:

(A) General requirements - the contractor pledges adequate security, and the official with expenditure authority determines, based on written findings, that the advance payment is in the public interest.

(B) The standards for advance payment determination are:

(I) The advance payments will not exceed the contractor's interim cash needs based on an analysis of the cash flow required for contract performance, consideration of the reimbursement or other payment cycle, and employment of the contractor's own working capital;

(II) The advance payments are necessary to supplement other funds or credit available for the contract;

(III) The recipient is otherwise qualified as a responsible contractor in all areas other than financial capability; and

(IV) Paying the contractor in advance will result in specific advantages to the Government.

(C) Advance payments shall be limited to not more than 25 percent of the contract price or an amount equivalent to a ~~60 day~~60-day working capital requirement, whichever is lower.

(ii) The official with expenditure authority demonstrates in writing that the common business practice of a particular industry requires buyers to pay on an advance payment basis. Such advance payment shall be limited to not more than 50 percent of the contract price. Pertinent documents supporting such business practice shall be attached to the written justification.

(iii) The official with expenditure authority demonstrates in writing that the advance payment is made pursuant to procurement of goods and services as provided in § 70-30.3-225(a)(2), (a)(3), or (a)(4), or § 70-30.3-235.

(2) Progress Payments. Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance. However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an evaluation of the contractor's performance. No official with expenditure authority shall make progress payments on a contract unless it has first been established that the covered work or service has been delivered in accordance with the contract. Payments shall be allowed on stored materials only upon arrival of materials in the CNMI, not prior to shipment, and only after inspection by the official with expenditure authority.

(c) The contract shall accurately reflect the actual government-Government requirement, stating adequately what is to be done or to be delivered to the Government. For instance, definite quantities shall be stated in the statement of deliverables, unless use of a requirements contract was justified under § 70-30.3-265. Contracts with general requirements shall be disallowed.

Cluses

~~(a) — Price. In executing contracts, agencies shall set the maximum amount that can be charged under the contract and disallow open ended contracts, i.e. contracts which that do not specify the maximum contract price. Whatever contract type is selected, agencies shall limit contracts to Contract shall be for a fixed price or a ceiling “not to exceed price”, which the contractor shall not exceed unless a change order is approved (See § 70 30.3 410, change order). Provided, however, in the case of However, with contracts for legal or lobbying services obtained pursuant to a contingency fee agreement, the agency shall put a fixed price on any costs to be borne by the agency out of the general fund, including but not limited to any price to be charged by the contractor in lieu of a percentage of an award obtained as a result of the contractor’s services.~~

~~(b) — Payment Terms. Payments shall be made only upon submission of evidence of work performed and adherence to contract terms and specifications. Generally, a one time payment shall be made after the official with expenditure authority has certified completion of work or delivery of goods or services. Other types of payments are as follows:~~

~~(1) — Advance Payments. Advance payments shall be authorized only in certain circumstances as provided in (b)(1)(i), in (b)(1)(ii), or in (b)(1)(iii) below.~~

~~(i) — The contractor fails to qualify as a responsible contractor due solely to the absence of financial capability, and it is justified under § 70 30.3 225 that the contractor is the only available source, subject to the following conditions:~~

~~(A) — General requirements — the contractor pledges adequate security, and the official with expenditure authority determines, based on written findings, that the advance payment is in the public interest.~~

~~(B) — The standards for advance payment determination are:-~~

~~(I) — The advance payments will not exceed the contractor’s interim cash needs based on an analysis of the cash flow required for contract performance, consideration of the reimbursement or other payment cycle, and employment of the contractor’s own working capital;~~

~~(II) — The advance payments are necessary to supplement other funds or credit available for the contract;~~

~~(III) — The recipient is otherwise qualified as a responsible contractor in all areas other than financial capability; and-~~

~~(IV) — Paying the contractor in advance will result in specific advantages to the government.~~

~~(C) — Advance payments shall be limited to not more than 25 percent of the contract price or an amount equivalent to a 60 day working capital requirement, whichever is lower.~~

~~(ii) — The official with expenditure authority demonstrates in writing that the common business practice of a particular industry requires buyers to pay on an advance payment basis. Such advance payment shall be limited to not more than 50 percent of the contract price. Pertinent documents supporting such business practice shall be attached to the written justification.~~

~~(iii) — The official with expenditure authority demonstrates in writing that the advance payment is made pursuant to procurement of goods and services as provided in § 70 30.3 225(a)(2), (a)(3), or (a)(4), or § 70 30.3 235(b)(1).~~

~~(2) Progress Payments. Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor's performance.~~

~~(i) However, if the contract consists of the performance of separate and distinct tasks, then any funds so withheld with regard to a particular task may be paid upon completion of that task and an written evaluation of the contractor's performance.~~

~~(ii) No official with expenditure authority shall make progress payments on a contract unless it has first been established that the covered work or service has been delivered in accordance with the contract.~~

~~(iii) Payments shall be allowed on stored materials only upon arrival of materials in the CNMI, not prior to shipment, and only after inspection by the official with expenditure authority.~~

~~(c) The contract shall accurately reflect the actual government requirement, stating adequately what is to be done or to be delivered to the government. For instance, definite quantities shall be stated in the statement of deliverables, unless use of a requirements contract was justified under § 70-30.3-265. Contracts with general requirements shall be disallowed.~~

~~(d) Contracts for untimely delivered goods. Otherwise valid contracts for goods, that expired within 120 days due to delivery, shall be honored as a valid contract if so request in a signed document by the expenditure authority.~~

~~(e) Bonds: Bid and performance bonds may be required for supply or service contracts as Director deems advisable to protect the interest of the Commonwealth. Any such requirements must be set forth in the solicitation. Bid or performance bonds should not be used as a substitute for a determination of bidder or offeror responsibility. When so required the following bonds or security shall be delivered to the Commonwealth, and shall become binding on the parties upon the execution of the contract:~~

~~A performance bond executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commonwealth, in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance; and~~

~~A payment bond satisfactory to the Commonwealth, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Commonwealth, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the construction work provided for in the contract. The bond shall be in an amount equal to 100% of the portion of the contract price that does not include the cost of operation, maintenance, and finance.~~

~~The bond shall be delivered by the contractor to the Commonwealth prior to the contract being executed. If a contractor fails to deliver the required bond, the contractor's bid (or offer) shall be rejected, its bid security shall be enforced, and award of the contract shall be made to the next ranked bidder (or offeror) as otherwise provided by these regulations.~~

~~Reduction of Bond Amounts during performance. The Director may reduce the amount of the performance bond as work is completed if determined in writing that such reduction is in the best interest of the Commonwealth.~~

§ 70-30.3-405 ~~Contract Administration~~ of Contracts

(a) The primary responsibility for ensuring compliance with these regulations and applicable laws during the life of a contract ~~in contracting~~ rests with the official with expenditure authority. ~~The official with expenditure authority must comply with requirements for~~ The official with expenditure authority is also primary responsible for drafting solicitations, evaluating bids or proposals, obtaining appropriate approvals, approving contractor invoices, and evaluating contractors upon the completion of contracts, including but not limited to drafting the invitation to bid or request for proposal, advertising the procurement availability of contracts, soliciting bids from potential contractors, evaluating bids or offers the bidding contractors, drafting the contracts to conform with applicable requirements, obtaining the appropriate approvals, approving payment for services, and evaluating the contractors upon completion of the contracts.

(b) The oversight responsibility for the ~~G~~government's administration and enforcement of its contracts rests primarily with the ~~P&S~~ Director. ~~who~~ The Director ~~He or she~~ shall be responsible for developing standard contract administration procedures ~~to be used by officials with expenditure authority~~, maintaining a central depository of contractor evaluations, and making the evaluations available to other agencies upon request.

(c) Contract Monitoring.

(1) Contract monitoring ~~shall~~ ~~shall be~~ be accomplished through production surveillance and reporting. Production surveillance is a function which the official with expenditure authority uses to determine contractor progress and to identify any factors that may delay performance. It ~~shall~~ shall involve ~~government~~ Government review and analysis of:

- (i) Contractor performance plans, schedules, controls, and industrial processes; ~~and~~
- (ii) The contractor's actual performance under them.

(2) When information on contract performance status is needed, officials with expenditure authority shall require contractors to submit production progress reports. The official with expenditure authority shall review and verify the accuracy of contractor reports and advise the ~~P&S~~ Director of any actions ~~he plans to take~~ planned as a result ~~because~~ of any potential or actual delay in performance, including the withholding of payments.

(3) ~~The~~ The ~~P&S~~ Director shall verify, whenever necessary and practicable, the results of monitoring by the official with expenditure authority. The ~~P&S~~ Director shall determine the extent of surveillance based on several factors such as the contractor's history of contract performance, the contractor's experience with the contract supplies or services, and the contractor's financial capability. For construction contracts (including architect-engineer services), contract monitoring is performed by the Secretary of the Department of Public Works or ~~his~~ their designee pursuant to § 70-30.3-115(i).

(de) Evaluating Results.

(1) Officials with expenditure authority shall complete, within 15 days of the end of the contract ~~or upon requesting a for cost change order pursuant to § 70-30.3-410~~, a post-evaluation of ~~the each~~ contractor, ~~which~~ ~~shall~~ shall be kept on file for 36 months. The official with expenditure authority shall report at least the following information to the ~~P&S~~ Director on a prescribed form:

- (i) Whether the contracted work or service was completed as specified in the contract, and the reasons for and amount of any cost overruns or delayed completions; ~~;~~
 - (ii) Whether the contracted work or services met the quality standards specified in the contract; ~~;~~
 - (iii) Whether the contractor fulfilled all the requirements of the contract, and if not, in what ways the contractor did not fulfill the contract; ~~;~~
 - (iv) Factors outside the control of the contractor that caused difficulties in contractor performance; ~~and;~~
 - (v) How the contract results and findings will be utilized to meet the goals of the official with expenditure authority.
- (2) The post evaluation of each contractor ~~shall~~ shall be submitted before final payment and close-out of the contract is done.
- (3) Final payment ~~shall~~ shall not be made unless the contractor has submitted a tax clearance verifying the filing of all required Commonwealth employment, excise, gross revenue, and income tax returns and payment of all amounts owing on such returns.
- (4) The ~~P&S~~ Director shall establish and maintain a central depository of all contract administration documents, which should include, but not be limited to, progress performance and post-evaluation documents. These documents ~~shall~~ shall be made available to any expenditure authority upon request to the ~~P&S~~ Director.

§ 70-30.3-409 Annual Reauthorization of Multi-Year Contracts

(a) Applicability. This ~~sub~~ section applies to otherwise validly executed contracts governed by these regulations.

(b) Reauthorization Procedure. Sixty (60) days prior to the end of the fiscal year, the Expenditure Authority shall route a duly executed Annual Reauthorization Request, as established by the Department of Finance, requesting Department of Finance to continue the draw down in the new fiscal year.

(c) ~~No change orders shall be executed for~~ for annual reauthorization of payment or change of account, no change order is needed.

§ 70-30.3-410 Change Order~~s~~

(a) Execution of a change order ~~shall~~ shall only ~~be~~ be allowed if an increase, decrease, or change in the scope of work is required which was not reasonably foreseeable at the time of the formation of the contract. ~~However, no Change orders shall confirm to the following:~~

(1) ~~Quantity. No more than five change orders shall be issued for any single contract regardless of cost or duration.~~

~~Change in Account Number. When a change in account number is necessary, t-Orders for Change of Account:~~ The expenditure authority shall execute a writing as prescribed by the Department of Finance to change ~~the~~ the ~~a~~ a Account ~~n~~ n Number ~~for an of an~~ otherwise valid

contracts for the Director's approval. No change order ~~is shall be~~ drafted for internal accounting purposes.

(2) ~~For-Cost Change Order.~~ The sum of all change orders cannot exceed 25 percent of the original contract ~~amount~~ price.

(3) ~~No change order resulting in an increase in contract cost or time is shall be~~ allowed when it is a direct result of the contractor's inexperience, inefficiency, or incompetence.

(b) Before adding significant new work to existing contracts, the expenditure authority ~~agency~~ shall provide a thorough written assessment explaining why it is or is not more advantageous to seek competition. Change orders on construction and ~~architect-engineer~~ A&E contracts which exceed 25 percent of the cumulative contract price ~~shall shall~~ automatically be procured through the appropriate competitive procedures that uses full and open competition pursuant to § 70-30.3-201. ~~—except when the procurement of the additional work is authorized without using full and open competition under § 70-30.3-215.~~

(c) Contractors shall not be allowed to continue working beyond the expiration term of an original contract or change order in the absence of an approved new contract or change order. The expenditure authority ~~must shall~~ circulate change orders not less than 30 days prior to expiration ~~processed~~ using the procedures for processing new contracts in § 70-30.3-115. Changes orders placed into circulation after the stated date of expiration of the underlying contract shall be denied.

~~(d) — Contract Extension of Services.~~

~~(1) Routing a contract extension as called for in the original contract requires a change order. Such change orders must be routed prior to the expiration of the original contract.~~

~~(2) Award of Contracts for recurring and continuing service as defined by § 70-30.3-040 requirements are often delayed due to circumstances beyond the control of contracting offices. In order to avoid negotiation of short extensions to existing contracts, the P&S Director may include an extension clause in solicitations and contracts which will enable the government to require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once. However, the total extension of performance thereunder shall not exceed 6 months, unless a longer term is negotiated in the original contract. In no circumstance shall extensions exceed the original contract term.~~

~~(3) Contracts for small purchases that fall within § 70-30.3-220 (c) shall not be extended beyond twelve (12) months.~~

(d) Extension of Services. Award of contracts for recurring and continuing service requirements are often delayed due to circumstances beyond the control of contracting offices. In order to To avoid negotiation of short extensions to existing contracts, the Director may include an option clause in solicitations and contracts which will enable the government Government to require continued performance of any services within the limits and at the rates specified in the contract. The option provision may be exercised more than once, but the total extension of performance thereunder shall not exceed 6 months.

§ 70-30.3-415 Ratification of Unauthorized Commitments.

(a) Definitions.

(1) Ratification, as used in this subsection, means the act of approving an unauthorized commitment by a the expenditure authority who has the authority to do so.

(2) Unauthorized commitment, as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) Policy. Agencies shall take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures shall not be used in a manner that encourages such unauthorized commitments to be being made by CNMI personnel.

(1) Subject to the limitations in paragraph (c) of this subsection, the expenditure authority,

may request the Director to ratify an unauthorized commitment.

(2) Limitations. The authority in paragraph (b) of this subsection may be exercised only when:

(i) A. Supplies or services have been provided to and accepted by the Government, or the government Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(ii) B. The expenditure authority had the authority to enter into enter a contractual commitment;

(iii) C. The resulting contract would otherwise have been proper if made in a manner approved by these regulations;

(iv) D. The Director determines the price to be fair and reasonable;

(v) E. The Director recommends payment payment, and the Attorney General concurs in the recommendation;

(vi) F. Funds are available and were available at the time the unauthorized commitment was made; and

(vii) G. The ratification is in accordance with any other limitations prescribed under these procedures.

(c) Ratification Requests Authority to ratify. The expenditure authority shall submit a ratification request request the ratification of an unauthorized contractual commitments to both the Director and the Attorney General. for approval by both the Director and the Attorney General.

(d) Criminal investigation. Generally, the Government is not bound by commitments made by persons with no contracting authority. Unauthorized commitments may violate laws or

regulations. They constitute serious employee misconduct and may warrant disciplinary action. If unauthorized commitments involve any type of misconduct that might be punishable as a criminal offense, either the contracting officer or the employee's supervisor ~~must~~shall report the matter immediately to the Office of the Attorney General.

~~(e)~~ e Documentation ~~R~~Required for ~~R~~Ratification. When submitting a ratification request, the expenditure authority who made the unauthorized commitment shall give gives the Director all records and documents concerning about the commitment, including a complete written statement of facts that explains:

- ~~(1)~~ (1) Why normal acquisition procedures were not followed;
- ~~(2)~~ (2) Why the contractor was selected;
- ~~(3)~~ (3) Identifies other sources/vendors considered;
- ~~(4)~~ (4) Description of work or products;
- ~~(5)~~ (5) Estimated or agreed-upon contract price; and;
- ~~(6)~~ (6) Status of contract performance; ~~certification of completion.~~

~~(f)~~ f Processing a ~~R~~Ratification. The Director ~~shall~~must process the request for ratification by preparing a summary statement of facts, and a recommendation to the Attorney General ~~whether or not~~whether the procurement should be ratified. The Director shall include a recommendation for other disposition if advising against ratification; and provide recommendation for corrective action to prevent recurrence.

~~(1)~~ (1) If other than the full amount requested by the expenditure authority is approved, the Director may request payment based on a showing of either of the following: payment based on quantum meruit or quantum valebant. To base payment on either of these conditions, there must be a showing that the Government has received a benefit.

~~(iA)~~ (iA) The reasonable value of work or labor provided to the Government; or Services rendered on a quantum meruit basis (the reasonable value of work or labor).

~~(iiB)~~ (iiB) Goods furnished on a quantum valebant basis (the reasonable value of goods sold and delivered to the Government.)

~~(2)~~ (2) The Director shall either:

~~(iA)~~ (iA) Approves the ratification request in writing and ~~sends~~ sends the approval to the Attorney General. If the Attorney General concurs, the Director shall send a written request to the expenditure authority for issuance of the necessary contractual documents; ~~or;~~

~~(iiB)~~ (iiB) Returns an unjustified request or recommendation to the Expenditure Authority with a written explanation on why the request or recommendation ~~was~~ denied.

~~(3C)~~ (3C) Files. The ~~Division of Procurement and Supply~~ Division of Procurement Services will maintain a separate file containing a copy of each request to ratify an unauthorized contractual commitment and the response.

Part 500 - ~~Protests, Appeals; -and Disputes~~ Appeals Disputes

Subpart A - Protests and Appeals

~~Subpart A - Bid Protests and Appeals~~

§ 70-30.3-501 ~~Protests to the to the P&S Filed With the~~ Director of Procurement Services ~~and Supply~~

(a) General.

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with a solicitation or award of a contract may protest to the Director. The Director shall receive the protest in writing and within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. The protest shall state fully the factual and legal grounds for the protest. The Director shall consider only protests that are written, whether submitted before or after award. Oral protests shall not be considered.

(2) Protest Bond. A protest bond executed by a surety company authorized to do business in the Commonwealth in an amount equal to at least fifteen percent of the protestor's bid price or offer, in a form and substance that is acceptable to the Government, shall be delivered to the Director at the time of filing a protest. The protest bond shall be immediately payable to the CNMI Treasury upon a decision by the Director or Secretary of Finance that a protest has been brought or pursued in bad faith; or does not state on its face a valid basis for protest. The Division of Procurement Services shall hold a protest bond for at least thirty (30) days after the date of the final determination by the Government.

(b) Protest Before Award.

(1) When a proper ~~protest against~~ protest the making of an award is received, the award shall be withheld pending disposition of the protest. The parties involved in or affected by the protest, including bidders whose bids might become eligible for award, shall be informed of the protest. These persons shall be advised that they may submit their views and relevant information to the Director within seven (7) calendar days. The Director may extend the ~~period of time~~period to submit views and relevant information if the Director determines that the complexity of the matter requires a longer period of time.

(2) The Director shall decide the protest within thirty (30) calendar days after all interested parties have submitted their views unless the Director certifies that the complexity of the matter requires more time, in which event the Director shall specify the appropriate time, which shall not exceed sixty (60) calendar days.

(3) Prior to the expiration time for the acceptance of offers or proposals, the Director shall request the parties involved in or affected by the protest to extend the time for acceptance to avoid the need for re-advertisement.

(4) When a written protest is received, award shall not be made until the matter is resolved, unless the Director determines in writing that urgent and compelling circumstances, which significantly affect the interests of the Government, require proceeding with the award.

(5) If award is made under subsection (b)(4) above, the Director shall document the file to explain the need for an immediate award. The Director shall also give written notice to the protester and others involved in or affected by the decision to proceed with the award.

(6) The Director is authorized to make the determination in subsection (b)(4) above after receiving the recommendation of the expenditure authority. The determination of the urgent and compelling situation shall be submitted to the Attorney General for review, and absent objection from the Attorney General within five working days of such submittal, the Director's determination becomes final. The Director shall notify the Secretary of Finance that award is to proceed under the determination in subsection (b)(4) above. The Director shall also give written notice to the protester and other parties involved in or affected by the decision to proceed with the award.

(c) Protests After Award. If a protest is received after an award, the Director shall furnish the contractor with notice of the protest and its basis in accordance with subsection (b) above. The protest shall be decided in accordance with the procedures set forth in subsection (b) above.

(d) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Commonwealth. The term "file" or "submit" except as otherwise provided refers to the date of transmission.

(2) In computing any period of time period prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation or award of a contract may protest to the Director. The protest shall be received by the Director in writing within ten (10) calendar days after such aggrieved person knows or should have known of the facts giving rise thereto. The Director shall consider all protests or objections to the award of a contract, whether submitted before or after award. Oral protests shall not be considered. If a protest is oral and the matter cannot be resolved, The Director will create a written confirmation of the protest that shall state fully the factual and legal grounds for the protest;

(2) Other persons, including bidders involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases. These persons shall also be advised that they may submit their views and relevant information to the P&S Director within a specified period of time, but not less than 7 calendar days. Normally, the time specified will be one week. Exceptions are to be considered exceptional and will be granted sparingly;

(A) Format of Protest.

(A) To expedite handling of protests, the envelope should be labeled "Protest."

(B) The written protest shall include, at least, the following information:

(i) The name and address of the protester;

(ii) Appropriate identification of the procurement, and, if a contract has been awarded, its number;

(iii) A statement of reasons for the protest, including citation to any laws the protester believes have been violated; and

~~(iv) — Supporting exhibits, evidence, or documents to substantiate any claims unless not available within the filing time in which case the expected availability date shall be indicated.~~

~~(C) — Protests that do not comply with this subsection must be revised within 7 days from the notice of non-compliance or it will be dismissed.~~

~~(3) — The P&S Director shall decide the protest within twenty (20) calendar days after all interested parties have submitted their views unless the Director determines he certifies that the complexity of the matter requires a longer more time, in which event he shall specify the an appropriate longer time, but not more than 60 calendar days;~~

~~(4) — When a protest, before or after award, has been appealed to the Public Auditor, as provided in these procedures, and the P&S Director is requested to submit a report that shall include the P&S Director should include with his report a copy of;~~

~~(i) — The protest;~~

~~(ii) — The bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;~~

~~(iii) — The solicitation, including the specifications on portions relevant to the protest;~~

~~(iv) — The abstract of offers or relevant portions;~~

~~(v) — Any other documents that are relevant to the protest; and~~

~~(vi) — The P&S Director's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the P&S Director's report will include the determination prescribed in subsection (b)(4).~~

~~(5) — Appeals. Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the P&S Director's decision is filed with has been taken to the Public Auditor, the P&S Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above. To further expedite processing, the The official who Purchasing Authority will furnish produce the agency's report on the bid should, upon request of the appellant or the Public Auditor, simultaneously and furnish a complete copy (except for information deemed privileged by law or the P&S Director) to both parties. deems must be confidential in order to benefit from competitive bidding) to the appellant. In such instances, the appellant shall be requested to furnish a copy of any comments on the administrative report directly to the Public Auditor as well as the P&S Director.~~

~~(b) — Protest Before Award~~

~~(1)(i) — The P&S Director shall require that written confirmation of an oral protest be submitted by the time specified in subsection (a)(1) and may inform the protester and all interested parties that the award will be withheld until the specified time. If the written protest is not received by the time specified, the oral protest may be disregarded.~~

~~(ii) — An award may be made in the normal manner unless the P&S Director finds it necessary in his discretion to take remedial action.~~

~~(2) — When a proper protest against the making of an award is received, the award will be withheld pending disposition of the protest. The bidders whose bids might become eligible for award shall be informed of the protest. In addition, those bidders shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance to avoid the need for re-advertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subsection (b)(3) below.~~

~~(3) — When the P&S Director receives a protest, a contract may not be awarded pending the resolution of the protest and appeal to the Public Auditor, if any, (including the time period for filing an appeal), unless it is determined in writing that urgent and compelling circumstances which significantly affect the interest of the Commonwealth will not permit awaiting the decision of the P&S Director and the Public Auditor.~~

~~(4) — The P&S Director is authorized to make the determination in subsection (b)(3) above after receiving the recommendation of the expenditure authority. The determination of the urgent and compelling situation shall be submitted to the Attorney General for review, and absent objection from the Attorney General within five working days of such submittal, the P&S Director's determination becomes final. A contract award shall not be authorized until the P&S Director has notified the Public Auditor of his/her determination in subsection (b)(3) above. The P&S Director also shall give written notice to the protester and others concerned of the decision to proceed with the award.~~

~~(c) — Protests After Award~~

~~Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the P&S Director, at least If an award is filed after an award but before the contract is fully executed, the Director shall furnish the contractor shall be furnished the with notice of the protest and its basis in accordance with subsection (a)(2) above. The protest shall be decided in accordance with the procedures set forth in subsection (a)(4) and (b). When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the government's interest, the P&S Director should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.~~

~~(d) — Appeals. The Director's final decision on a bid protest is appealable to the Public Auditor within 10 calendar days. Upon receipt of notice that an appeal from the Director's decision is filed with the Public Auditor, the Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4). The Expenditure Authority will produce the agency's report on the bid and furnish a complete copy (except for information deemed privileged by law or the Director) to both parties. In such instances, the appellant shall be requested to furnish a copy of any comments on the administrative report directly to the Public Auditor as well as the Director. A decision under this section shall constitute a final agency action for purposes of the Administrative Procedure Act. 1 CMC §§ 9101-9115.~~

~~(e) — Computation of Time~~

~~(1) — Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Commonwealth government. The term "file" or "submit" except as otherwise provided refers to the date of transmission.~~

~~(2) — In computing any period of time prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.~~

§ 70-30.3-505 Appeals of ~~P&S~~ Director's Decisions to the Secretary of Finance ~~Public Auditor~~

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Secretary of Finance ~~Public Auditor~~ from a decision by the ~~P&S~~ Director may be taken provided that the party taking the

appeal has first submitted a written protest to the ~~P&S~~ Director as provided in section § 70-30.3-501 of these procedures, and the ~~P&S~~ Director has denied the protest or has failed to act on the protest within the time provided for in § 70-30.3-501 ~~(a)(3)~~ above.

(b) Form of Appeal. No ~~particular form~~ of pleading is required for filing an appeal to the ~~Public Auditor~~ Secretary of Finance. The appeal shall, however:

- (1) Include the name and address of the appellant;
- (2) Identify the contracting agency and the number of the solicitation or contract;
- (3) Contain a concise, logically arranged, and direct statement of the grounds for appeal; and
- (4) Specifically request a ruling by the ~~Public Auditor~~ Secretary of Finance.

(c) Time for Filing Appeal. An appeal from the ~~P&S~~ Director's decision ~~must~~ shall be received by the ~~Office of the Public Auditor~~ Secretary of Finance not later than ten (10) calendar days after the appellant receives the decision of the ~~P&S~~ Director, or, in the event that the ~~P&S~~ Director has not decided the protest, within ten (10) calendar days from the date that the protest should have decided pursuant to § 70-30.3-501 ~~(a)(3)~~ above. Any appeal received after these time limits ~~shall~~ shall not be considered by the ~~Public Auditor~~ Secretary of Finance unless good cause is shown or unless the ~~Public Auditor~~ Secretary of Finance determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the Commonwealth should the appeal be considered.

(d) Notice of Appeal, Submission of ~~P&S~~ Director's Report, and Time for Filing of ~~Comments on Report~~

(1) The ~~Public Auditor~~ Secretary of Finance shall notify the ~~P&S~~ Director by telephone and in writing within one day of the receipt of an appeal, requesting the ~~P&S~~ Director to give notice of the appeal to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. The ~~P&S~~ Director shall be requested to furnish in accordance with § 70-30.3-501 ~~(a)(2)~~ of these procedures, ~~one~~ copies of the protest and appeal documents to such parties with instructions to communicate further directly with the ~~Public Auditor~~ Secretary of Finance.

(2) Material submitted by an appellant will not be withheld from any Commonwealth or federal agency which may be involved in the appeal except to the extent that the withholding of information is ~~permitted or~~ required by law or regulation. If the appellant considers that the protest contains material which should be withheld because it is confidential under applicable law or regulation, a statement advising of this fact ~~must~~ shall be affixed to the front page of the appeal document and the allegedly confidential/proprietary information ~~must~~ shall be so identified wherever it appears.

(3) The ~~Public Auditor~~ Secretary of Finance shall request the ~~P&S~~ Director to submit a complete report on the appeal to the ~~Public Auditor~~ Secretary of Finance as expeditiously as possible (generally within 10 working days) in accordance with § 70-30.3-501 ~~(a)(4)~~ of these procedures and to furnish a copy of the report to the appellant and other interested parties.

(4) Comments on the agency report ~~shall~~ shall be filed with the ~~Public Auditor~~ Secretary of Finance within ten days after the ~~Public Auditor~~ Secretary of Finance's receipt of the report, with a copy to the agency which furnished the report and to other interested parties. Any rebuttal an appellant or interested party may make ~~shall~~ shall be filed with the ~~Public Auditor~~ Secretary of

Finance within five days after receipt of the comments to which rebuttal is directed, with a copy to the agency office which furnished the report, the appellant, and interested ~~parties, as the case may be~~parties. Unsolicited agency rebuttals ~~shall~~shall be considered if filed within five days after receipt by the agency of the comments to which rebuttal is directed.

(5) The failure of an appellant or any interested party to comply with the time limits stated in this section may result in resolution of the appeal without consideration of the comments untimely filed.

(e) Withholding of Award. When an appeal has been filed before award, the ~~P&S~~ Director, ~~shall will~~ not make an award prior to the resolution of the protest except as provided in § 70-30.3-501 this section. In the event the ~~P&S~~ Director determines that award is to be made during the pendency of an appeal, the ~~P&S~~ Director will notify the Attorney General~~Public Auditor~~.

(f) Furnishing of Information on Protests. The ~~Public Auditor~~Secretary of Finance shall, upon request, make available to any interested party information bearing on the substance of the appeal which has been submitted by interested parties or agencies, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon ~~shall~~shall be submitted within a maximum of ten days.

(g) Time for Submission of Additional Information. Any additional information requested by the ~~Public Auditor~~Secretary of Finance from the appellant or interested parties ~~shall~~shall be submitted no later than five days after the receipt of such request.

(h) Conference.

(1) A conference on the merits of the appeal with the ~~Public Auditor~~Secretary of Finance ~~may~~may be held at the request of the appellant, any other interested party, or ~~the P&S~~ Director. A request for a conference should be made prior to the expiration of the ~~time period~~time allowed for filing comments on the agency report. Except in unusual circumstances, requests for a conference received after such time will not be honored. ~~The Public Auditor will determine whether a conference is necessary for resolution of the appeal.~~

(2) Conferences normally will be held prior to expiration of the period allowed for filing comments on the agency report. All interested parties ~~shall~~shall be invited to attend the conference. Ordinarily, only one conference will be held on an appeal.

(3) Any written comments to be submitted and as deemed appropriately by the ~~Public Auditor~~Secretary of Finance as a result of the conference ~~must~~shall be received ~~at~~in the ~~Office~~ of the ~~Public Auditor~~Secretary of Finance within five days of the date on which the conference was held.

(4) ~~Time for Decision~~—Notice of Decision. The ~~Public Auditor~~Secretary of Finance shall, if possible, issue a decision on the appeal within ~~thirty~~30 calendar ~~25~~ days after all information necessary for the resolution of the appeal has been received. A copy of the decision ~~shall~~shall immediately be mailed or otherwise transmitted to the appellant, other participating parties, and the ~~P&S~~ Director.

(i) Request for Reconsideration.

- (1) Reconsideration of a decision of the ~~Public Auditor~~Secretary of Finance may be requested by the appellant, any interested party who submitted comments during consideration of the protest, the ~~P&S~~ Director, and any agency involved in the protest. The request for reconsideration ~~shall~~shall contain a detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.
- (2) Request for reconsideration of a decision of the ~~Public Auditor~~Secretary of Finance ~~shall~~shall be filed not later than ten ~~(10)~~ calendar days after the basis for reconsideration is known or should have been known, whichever is earlier. The term "filed" as used in this section means receipt in the Office of the ~~Public Auditor~~Secretary of Finance.
- (3) A request for reconsideration ~~shall~~shall be subject to these ~~bid~~ protest procedures consistent with the need for prompt resolution of the matter.

§ 70-30.3-510 Remedies

(a) Remedies Prior to Award.

~~(1) If prior to award the P&S Director, the Attorney General or the Public Auditor~~Secretary of Finance determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the ~~P&S~~ Director or Secretary of Finance ~~or the Public Auditor~~ shall have the solicitation or proposed award:

- ~~(i)~~ Canceled; or
- ~~(ii)~~ Revised to comply with law or regulation.

~~(b) Remedies After an Award. If after an award the Director or the Secretary of Finance determines that a solicitation or award of a contract is in violation of law or regulation, then the Director or the Secretary of Finance may:~~

~~(1) If the person awarded the contract has not acted fraudulently or in bad faith:~~

~~(i) Ratify or affirm the contract provided it is determined that doing so is in the best interest of the Commonwealth; or~~

~~(ii) Terminate the contract and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination;~~

~~(2) If the person awarded the contract has acted fraudulently or in bad faith:~~

~~(i) Declare the contract null and void; or~~

~~(ii) Ratify or affirm the contract if such action is in the best interests of the Commonwealth, without prejudice to the Commonwealth's rights to such damages as may be appropriate.~~

~~(b) Remedies After an Award. If after an award the P&S Director, the Attorney General or the Public Auditor determines that a solicitation or award of a contract is in violation of law or regulation, then the P&S Director or the Public Auditor may:~~

~~(1) If the person awarded the contract has not acted fraudulently or in bad faith:~~

~~(i) Ratify or affirm the contract provided it is determined that doing so is in the best interest of the Commonwealth; or~~

~~(ii) Terminate the contract and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract, plus a reasonable profit, prior to termination;~~

~~(2) If the person awarded the contract has acted fraudulently or in bad faith:~~

- (i) ~~Declare the contract null and void; or~~
- (ii) ~~Ratify or affirm the contract if such action is in the best interests of the Commonwealth, without prejudice to the Commonwealth's rights to such damages as may be appropriate.~~
- (d) ~~Appeals. The Director's final decision on a bid protest is appealable to the Public Auditor within 10 calendar days. Upon receipt of notice that an appeal from the Director's decision is filed with the Public Auditor, the Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4). The Expenditure Authority will produce the agency's report on the bid and furnish a complete copy (except for information deemed privileged by law or the Director) to both parties. In such instances, the appellant shall be requested to furnish a copy of any comments on the administrative report directly to the Public Auditor as well as the Director. A decision under this section shall constitute a final agency action for purposes of the Administrative Procedure Act. 1 CMC §§ 9101-9115.~~

§ 70-30.3-515 Effective Date

All protests as to the manner of procurement bidding, the failure to properly award a contract bid, the failure of government-Government to contract with a business after bidding bidding, or the cancellation of a solicitation bids which may or may not be subject of lawsuit but have not reached final judgment as of the effective date of the regulations in this subchapter ~~shall shall~~ be heard in accordance with this subpart upon the request of the actual or prospective bidder, offeror, or contractor who is aggrieved.

Subpart B - Disputes Based on Contract ~~Contract Disputes Based on Contracts~~

§ 70-30.3-520 Disputes

(a) Any dispute between the government-Government and a contractor relating to the performance, interpretation of or compensation due under a contract, which is the subject of the regulations in this subchapter, ~~must shall~~ be filed in writing with the P&S-Director and the official with the expenditure authority within ten ~~thirty~~ (10) calendar days after knowledge of the facts surrounding the dispute.

(b) ~~(1)~~ (1) — The official with expenditure -contracting authority ~~shall will~~ attempt to resolve the dispute by mutual agreement within the terms and conditions of the contract. If the dispute cannot be settled either party may request a decision on the dispute from the P&S Director. The P&S-Director shall review the facts pertinent to the dispute, secure necessary legal assistance, ~~and~~ and prepare a decision that ~~shall shall~~ include:

- (i) ~~A d~~ A Description of the dispute;
- (ii) ~~References~~ s to pertinent contract terms and conditions;
- (iii) ~~A s~~ A Statement ~~on of~~ the factual areas of disagreement or agreement; and
- (iv) ~~A statement~~ A ~~Statement of the decision~~ as to the factual areas of disagreement, ~~and~~ and conclusion of the dispute, and with the any supporting rationale used to support the dispute. ~~e.~~

(c) ~~(2)~~ (2) — The P&S-Director may require a hearing or that information be submitted on the record, ~~in his discretion.~~

(~~de~~) Duty to Continue Performance. A contractor that has a dispute pending before the official with expenditure authority or the ~~P&S~~ Director ~~shall~~~~must~~ continue to perform according to the terms of the contract, ~~and~~ ~~f~~ failure to ~~so~~ continue ~~will~~~~shall~~ be deemed to be a material breach of the contract unless ~~ss he obtains~~ a waiver of this provision is obtained from ~~by~~ the official with the expenditure authority.

Part 600 - Socio-~~E~~conomic Programs

[Reserved.]

Part 700 - Ethics in Public Contracting

Subpart A - Definitions

§ 70-30.3-701 Definitions of Terms

- (a) “Confidential information” means any information which is available to an employee only because of the employee’s status as an employee of this ~~government~~ Government and is not a matter of public knowledge or available to the public on request.
- (b) “Conspicuously” means written in such special or distinctive form, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (c) “Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.
- (d) “Financial interest” means:
- (1) Ownership of any interest or involvement in any relationship from which or as a result of which, a person within the past year has received or is presently or in the future entitled to receive compensation; or
 - (2) Holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.
- (e) “Gratuity” means a payment, loan, subscription, advance, deposit of money, ~~services~~~~services~~, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received. A gratuity may include any tangible and intangible benefit in the nature of gifts favors, entertainment, discounts, passes, transportation, accommodation, hospitality or offers of employment.
- ~~(f) (f)~~ —“Immediate family” means spouse, children, parents, brothers, and sisters, ~~grandparents and grandchildren, as well as those of any legal spouse thereof.~~

~~(/) "Blind trust" means an independently managed trust in which the employee beneficiary has no management rights and in which the employee beneficiary is not given notice of alterations in, or other dispositions of, the property subject to the trust.~~

Subpart B -- Standards of Conduct

§ 70-30.3-705 Policy

~~(a) Public employment is a public trust. In governmental contracting, public employees shall discharge their duties impartially so as to:~~

~~(i) Ensure fair competitive access to governmental procurement by reasonable contractors; and~~

~~(ii) Conduct themselves in a manner as to foster public confidence in the integrity of the government Government procurement process.~~

~~Public employment is a public trust. In governmental contracting, public employees shall discharge their duties impartially so as to:~~

~~(a) Ensure fair competitive access to governmental procurement by reasonable contractors; and~~

~~(b) Conduct themselves in a manner as to foster public confidence in the integrity of the government procurement process.~~

§ 70-30.3-710 General Standards

(a) Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee's duties is a breach of a public trust. In order to fulfill this ethical standard, employees shall ~~must~~ meet the requirements of the regulations in this subchapter.

(b) Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this subchapter is ~~also~~ a breach of ethical standards.

§ 70-30.3-715 Employee Disclosure Requirements

(a) Disclosure of Benefit Received From Contract. Any employee who has, or obtains any benefit from, any Government contract with a business in which the employee has a financial interest, shall report such benefit in writing to the P&S-Director.

(b) Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of these ethical standards.

§ 70-30.3-720 Employee Conflict of Interest

(a) Conflict of interest. It is a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows ~~or should have known~~ that:

(1) The employee or any member of the employee's immediate family has a financial interest ~~pertaining in relating to~~ the procurement; or

(2) Any other person, ~~business~~business, or organization with whom the employee or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment, is involved in the procurement.

(b) Discovery of Aactual or Ppotential Cconflict of Iinterest, Ddisqualification and Wwaiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the P&S-Director a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor, who shall consult with the Attorney General, for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

~~§ 70 30.3 721 Financial Interest in a Blind Trust.~~

~~(1) Where an employee or any member of the employee's immediate family has a financial interest holds a financial interest in a blind trust, the employee shall not be deemed to have a conflict of interest with regard to matters pertaining to that financial interest, provided that disclosure of the existence of the blind trust is made to the Director of Procurement and Supply and the Attorney General at least 14 days in advance of participating in the procurement bidding process.~~

~~(2) Within 60 calendar days of the creation of a blind trust or, if such trust exists on the effective date of this subchapter, within 60 calendar days of such effective date, any Commonwealth employee who has a financial interest in a blind trust shall file a disclosure report with the Director of Procurement and Supply and the Attorney General which shall contain the following:~~

~~(i) A copy of the trust instrument;~~

~~(ii) The name and address of the trustee; and~~

~~(iii) A statement that the Commonwealth employee does not and will not receive notice of changes in the trust property.~~

~~(3) Within 30 days of the receipt of a disclosure report, the Attorney General shall determine in writing whether the particular trust falls within the definition set forth in. Upon a determination by the Attorney General that the particular trust fits within the definition set forth in, such employee may revise the trust arrangement and may submit a new disclosure report to the Director of Procurement and Supply and the Attorney General.~~

~~(b) Discovery of actual or potential conflict of interest, disqualification and waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file with the P&S Director a written statement of disqualification and shall withdraw from further participation in the transaction involved. The employee may, at the same time, apply to the Public Auditor, who shall consult with the Attorney General, for an advisory opinion as to what further participation, if any, the employee may have in the transaction.~~

§ 70-30.3-725 Gratuities and Kickbacks

(a) Gratuities. It ~~is shall be~~ a breach of ethical standards for any person ~~to to performs any acts or cause such acts to be taken that~~ offer, give or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefor.

(b) Kickbacks. It ~~is shall be~~ a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontractor or order.

§ 70-30.3-730 Prohibition Against Contingent Fees

(a) Contingent ~~F~~fees. It ~~is shall~~ be a breach of ethical standards for a person to be retained, or to retain a person, ~~to~~ to solicit or secure ~~government-Government~~ contracts upon an agreement or understanding for a commission, percentage, ~~brokeragebrokerage~~, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(b) Representation of ~~C~~contractor. Every person, before being awarded a ~~government-Government~~ contract, shall represent, in writing, that such person has not retained anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

§ 70-30.3-735 ~~Contract~~Required Ethics Clauses

The prohibitions against gratuities, ~~kickbacks and, and against~~ contingent fees ~~under § 70-30.3-725 and § 70-30.3-730 shall~~ shall be conspicuously set forth in every contract and solicitation therefor.

§ 70-30.3-740 ~~Restrictions on Employment of Present and Former Employees~~

(a) Present Employees. It ~~is shall be~~ a breach of ethical standards for any employee, per the definition provided for in §70-30.3-040, who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with the governmental body by whom the employee is employed.

~~(b) — Restrictions on former employees in matters connected with their former duties. Permanent disqualification of former employee personally involved in a particular matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the government, in connection with any:~~

~~(1) — Judicial or other proceeding, application, request for a ruling or other determination;~~

~~(2) — Contract;~~

~~(3) — Claim; or~~

~~(4) — Charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the government is a party or has a direct or substantial interest.~~

~~(c) — Disqualification of business when an employee has a financial interest. It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than government, in connection with any:~~

~~(1) — Judicial or other proceeding, application, request for a ruling or other determination;~~

~~(2) — Contract;~~

~~(3) — Claim; or~~

~~(4) — Charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the government is a party or has a direct and substantial interest.~~

(b) Restrictions on Former Employees, ~~as defined in § 70-30.3-040, in Matters Connected with Their Former Duties.~~

(1) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It ~~is shall~~ be a breach of ethical standards for any former employee, as defined by §70-30.3-040, to ~~to~~ knowingly ~~to~~ act as a principal ~~or~~ as an agent for anyone other than the Commonwealth, in connection with any judicial or other proceeding, application, request for ~~a~~ ruling, ~~or~~ other determination, ~~;~~ contract, ~~;~~ claim, ~~;~~ ~~or~~ charge, or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where the Commonwealth is a party or has a direct and substantial interest.

(2) One Year Representation Restriction Regarding Matters for Which a Former Employee Was Officially Responsible. It ~~is shall~~ be a breach of ethical standards for any former employee, as defined by §70-30.3-040, within one year after cessation of the former employee's official responsibility, to knowingly to act as a principal, or as an agent for anyone other than the Commonwealth, in connection with any judicial or other proceeding, application, request for ~~a~~ ruling, ~~or~~ other determination, ~~;~~ contract, ~~;~~ claim, ~~;~~ ~~or~~ charge, or controversy, in matters which

were within the former employee's official responsibility, where the Commonwealth is a party or has a direct or substantial interest.

(3) Subsection (b) applies only with regard to those same particular matters in which the former Commonwealth employee participated personally and substantially while a Commonwealth employee. In determining whether two particular matters are the same, the following factors ~~shall~~should be considered:

- (i) The factual basis of the matters;
- (ii) The relationship of the issues involved in each matter;
- (iii) The identity of the parties involved in each matter; and
- (iv) The continued existence of an important Commonwealth interest.

(c) Disqualification of Business When an Employee Has a Financial Interest.

(1) It ~~is~~shall be a breach of ethical standards for a business, in which an employee has a financial interest, to knowingly ~~to~~ act as a principal, or as an agent for anyone other than the Commonwealth, in connection with any judicial or other proceeding, application, request for ~~a~~ ruling, or other determination, ~~;~~ contract, ~~;~~ claim, ~~;~~ ~~or~~ charge, or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where the Commonwealth is a party or has a direct and substantial interest.

(2) In determining whether a business knows ~~or should have known~~ that a Commonwealth employee has a financial interest in that business for the purpose of applying the prohibition in subsection (c)(1), the factors to be considered should include the following:

- (i) The size of the business;
- (ii) The percentage of ownership in the business by the Commonwealth employee;
- (iii) The nature of the dealings of the Commonwealth employee with the business regarding such employee's financial interest; and
- (iv) Such other evidence as may be relevant and material.

(3) It ~~is~~shall be a breach of ethical standards for an employee of the Commonwealth to direct purchases or contracts to a company in which the employee or their immediate family has a financial interest in the real property from which the business operates.

(d) Selling to the Commonwealth After Termination of Employment ~~is Prohibited for one year.~~

(1) It ~~is~~shall be a breach of ethical standards for any former employee, as defined by 70-30.3-040. to engage in selling or attempting to sell supplies, services, or construction to the Commonwealth agency that employed the former employee, for one year following the date employment ceased. unless the former employee's last annual salary did not exceed \$24,000, to engage in selling or attempting to sell supplies, services, or construction to the Commonwealth agency that employed the former employee, for one year following the date employment ceased.

(2) The term "sell" as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining, negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or engaging in any other liaison activity with a view toward the ultimate consummation of a sale, although the actual contract therefor is subsequently negotiated by another person; provided, however, that this section is not intended to preclude a

former employee from accepting employment with private industry solely because the former employee's employer is a contractor with the Commonwealth, nor ~~may shall~~ a former employee be precluded from serving as a consultant to the Commonwealth.

§ 70-30.3-745 Use of Confidential Information

It ~~is shall be~~ a breach of ethical standards for any employee or former employee to knowingly use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person. To the extent that violations of the ethical standards of conduct set forth in this Part constitute violations of Commonwealth law, they ~~are shall be~~ punishable as provided therein.

§ 70-30.3-750 Collusion ~~by Bidders~~

Collusion or secret agreements between ~~offerors bidders~~ for the purpose of securing an advantage ~~over other offerors to the bidders against the authorizing agent in the awarding of contracts~~ is prohibited. The official with the expenditure authority, in consultation with the ~~Attorney General~~ Attorney General, shall ~~may~~ declare the contract void if ~~he finds~~ sufficient evidence ~~after a contract has been let~~ is found that ~~shows an offeror obtained a contract was obtained by a bidder or bidders~~ by reason of collusive or secret agreement among the ~~offerors bidders~~ to the disadvantage of the ~~G~~ government.

§ 70-30.3-755 Civil, Criminal and Administrative Remedies

~~(a) A government Government employee is any person whether appointed, elected, excepted service or civil service. An employee who violates the provisions of the r les and regulations in this chapter is subject to adverse action as may be appropriate in his or her particular circumstances.~~

~~(b) In addition to existing remedies provided by law, any person who violates any of the provisions of the regulations in this subchapter may be subject to reprimand, suspension without pay, termination of employment in accordance with the rules set forth in NMIAC § 10-20.2-257 (Adverse Actions), civil injunction, civil suit for damages, return of government Government money, and/or criminal prosecution.~~

~~In addition to existing remedies provided by law, any person who violates any of the provisions of the regulations in this subchapter may be subject to one or more of the following:~~

~~(a) In addition to existing remedies provided by law, any person who violates any of the provisions of the regulations in this subchapter may be subject to one or more of the following:~~

~~(1) Government employee, defined as any person whether appointed, elected, excepted service or civil service, who violates the provisions of the rules and regulations in this subchapter is subject to adverse action as may be appropriate in their his or her particular circumstances.~~

~~(2) This action includes but is not limited to reprimand, suspension without pay, and termination of employment in accordance with the rules set forth in NMIAC 10 20.2 257 (Adverse~~

~~Actions), as well as civil injunction, civil suit for damages, return of government money, and/or criminal prosecution.~~

(c) Contractors. A contractor who violates a provision of the rules and regulations in this subchapter ~~shall~~ will be subject to a written warning of reprimand, the termination of the contract, or suspension from being a contractor or subcontractor under a ~~government~~ Government contract, in addition to other penalties prescribed by law.

(d) All proceedings under this section ~~must~~ shall be in accordance with due process requirements.

§ 70-30.3-760 ~~Authority to~~ Debarment and Suspension

(a) ~~The official with e~~Expenditure ~~a~~Authority may file a dispute, with the Director, against an existing contractor for any failures of performance related to a contract governed by this subchapter.

(b) Within ~~fifteen~~ 15 calendar ~~calendar~~ days of receipt of the dispute, the Director shall notify the contractor of the nature of the grievance. -

~~The~~ Contractor shall be given ~~has~~ fifteen 15 calendar days to file a response, unless an extension of time, not to exceed ~~exceeding~~ thirty 30 days, is authorized by the Director. ~~reasonable notice to the person involved and the opportunity for the person to be heard under the Administrative Procedure Act [1 CMC §§ 9101, et seq.],~~

(c) The Director, after consultation with the official with expenditure authority and the Attorney General, ~~is authorized to~~ shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not exceed a period of ~~more than~~ three years. ~~The same officer-Director, after consultation with the official with expenditure authority and the Attorney General, shall have authority to suspend a person from consideration for award of contracts if there is probable cause for debarment. The suspension shall not be for a period exceeding three months.~~

(d) Causes for debarment or suspension. The causes for debarment or suspension include, but are not limited to, the following:

(1) Violation of contract provisions, ~~such as set out below,~~ of a character which is regarded by the ~~P&S~~ Director to be so serious as to justify debarment. ~~such as:~~

(i) Failure without good cause to perform in accordance with the specifications ~~or~~ within the time limits provided in the contract; ~~or~~

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered a basis for debarment; ~~or~~

(iii) Any other cause that the ~~P&S~~ Director determines to be so serious and compelling as to affect responsibility as a ~~government~~ Government contractor, including debarment by another governmental entity. ~~;~~ ~~or~~

- (2) For violation of any of the ethical standards set forth in part 700 of these regulations.
- (3) Conviction for commission of a criminal offense ~~is an~~ incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.;
- (4) Conviction under Commonwealth or federal statutes ~~for~~ embezzlement, theft, forgery, bribery, ~~falsification~~ falsification, or destruction of records, receiving stolen property, violation of the Consumer Protection Act (4 CMC §§ 5101, et seq.), violation of any unfair business practices as prescribed by 4 CMC § 5202, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects its responsibility as a ~~government~~ Government contractor.;
- (5) Conviction under Commonwealth or federal antitrust statutes arising out of the submission of bids or proposals such as in chapter 2 of division 5 of title 4 of the Commonwealth Code.;
- (f) Decision. The ~~P&S~~ Director shall issue a written decision to debar or suspend. The decision ~~shall~~ state the reasons for the action taken.
- (g) Notice of ~~D~~decision. A copy of the decision ~~shall~~ be mailed or otherwise furnished immediately to the debarred or suspended person. A copy of the decision ~~shall~~ also be provided to other Commonwealth procurement offices.

~~(h) — Appeal of Decision. The Director's final decision on a bid protest is appealable to the Public Auditor. Upon receipt of notice that an appeal from the Director's decision is filed with the Public Auditor, the Director shall immediately begin compiling information on the grievance. The Expenditure Authority will produce the agency's report on the grievance and provide a complete copy (except for information deemed privileged by law or the Director) to both parties. A decision under this section shall constitute a final agency action for purposes of the Administrative Procedure Act, 1 CMC §§ 9101-9115.~~

§ 70-30.3-765 ~~Civil and Administrative~~ Remedies Against Employees Who Breach Ethical Standards

- (a) Existing Remedies Not Impaired. Civil and administrative remedies against employees that are in existence on the effective date of this subchapter are in addition to the remedies provided by these regulations and ~~shall~~ not be impaired.
- (b) Right to Recovery from Employee Value Received in Breach of Ethical Standards. The Commonwealth may recover value of anything received by an employee in breach of the ethical standards provided in this subchapter. ~~provided in these of this Article or regulations. promulgated hereunder shall be recoverable by the Commonwealth as provided in this subsection.~~
- (c) Due Process. All procedures under this part shall be in accordance with due process requirements and existing law.

§ 70-30.3-770 ~~Civil and Administrative Remedies Against Non-Employees Who Breach Ethical Standards~~

(a) Existing Remedies Not Impaired. Civil and administrative remedies against non-employees that are in existence on the effective date of this subchapter are in addition to the remedies provided by these regulations and shall not be impaired.

(b) Supplemental Remedies. In addition to existing remedies for breach of the ethical standards of this part, the Director ~~of Procurement and Supply~~ may impose any one or more of the following:

- (1) Written warnings or reprimands;
- (2) Termination of transactions; ~~and and~~
- (3) Debarment or suspension from being a contractor or subcontractor under Commonwealth contracts in accordance with this ~~subchapter~~ Procurement Regulations.

(c) Right to Recovery from Non-Employee Value Transferred in Breach of Ethical Standards. The value of anything transferred in breach of the ethical standards of this part by a non-employee ~~is shall be~~ recoverable by the Commonwealth as provided by law.

(d) Right of the Commonwealth to Debar or Suspend. Debarment or suspension may be imposed by the Director of Procurement ent Services ~~ent and Supply~~ for breach of the ethical standards ~~as provided in of~~ this ~~subchapter~~ part, provided that such action may not be taken without the concurrence of the Attorney General.

(c) Due Process. All procedures under this section shall be in accordance with due process requirements, including, but not limited to, a right to notice and an opportunity for a hearing prior to imposition of any termination, debarment, or suspension from being a contractor or subcontractor under a Commonwealth contract.

§ 70-30.3-775 ~~Recovery of Value Transferred or Received in Breach of Ethical Standards~~

(a) General Provisions. The value of anything transferred or received in breach of the ethical standards of this Article or regulations promulgated hereunder by an employee or a non-employee may be recovered from both the employee and non-employee. The Commonwealth ~~shall will be be~~ entitled to costs and attorney fees incurred.

(b) Recovery of Kickbacks by the Commonwealth. Upon a showing that a subcontractor made a kickback to a prime contractor or a higher tier subcontractor in connection with the award of a subcontract or order thereunder, it ~~will shall~~ be conclusively presumed that the amount thereof was included in the price of the subcontract or order and ultimately borne by the Commonwealth and will be recoverable hereunder from the recipient. In addition, said value may also be recovered from the subcontractor making such kickbacks. Recovery from one offending party shall not preclude recovery from other offending parties. The Commonwealth ~~will shall~~ be entitled to costs and attorney fees incurred.

~~Part 800 – Cost And Price Analysis~~

~~Subpart A – General Provisions~~

~~§ 70-30.3-801 Purpose of Analysis~~

~~(a) — The regulations in this Part are designed to ensure that the Commonwealth of the Northern Mariana Islands receives a fair and reasonable price for all procurements, including contract modifications and change orders, and conserve limited resources.~~

~~(b) — The reasonableness of proposed prices is to be established by cost or price analyses prior to award and/or authorization of the expenditure.~~

~~(c) — Accordingly, these regulations require that some form of cost or price analysis is performed in connection with every procurement according to the policy established in § 70-30.3-805, unless a more stringent requirement is provided for in the specific procurement.~~

~~(d) — Where cost and pricing data are furnished, the Commonwealth has the right to secure a contract price adjustment if the data are subsequently found to be inaccurate, as provided in § 70-30.3-830.~~

~~§ 70-30.3-805 Pricing Policy~~

~~(a) — The official with expenditure authority is responsible for performing cost or price analysis for every procurement action conducted under their authority that is within the scope of Part 800, and submit written documentation detailing the analysis to the Director for review and approval.~~

~~(b) — The official with expenditure authority must price each contract separately and independently and not:~~

~~(1) — Use proposed price reductions under other contracts as an evaluation factor or~~

~~(2) — Consider losses or profits realized or anticipated under other contracts; and~~

~~(3) — Not include in a contract price any amount for a specified contingency to the extent that the contract provides for price adjustment based upon the occurrence of that contingency.~~

~~(c) The Director shall maintain cost or price analysis documentation within every procurement file covered by these regulations.~~

~~§ 70-30.3-810 Scope of Pricing Analysis~~

Received by: 
MATHILDA A. ROSARIO
Special Assistant for Administration


04/27/21
Date

File and
Recorded by: 
ESTHER SN. NESBITT
Commonwealth Registrar

04.27.2021
Date

Pursuant to 1 CMC § 2153(e) (AG approval of regulations to be promulgated as to form) and 1 CMC § 9104(a)(3) (obtain AG approval) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the CNMI Attorney General, and shall be published (1 CMC § 2153(f) (publication of rules and regulations).

Dated the 27 day of April, 2021.


EDWARD MANIBUSAN
Attorney General



**NUTISIAN PUPBLIKU PUT I MANMAPROPONI
NA REGULASION SIHA GI DIPÁTTAMENTUN
GUINAHA I TANU' GI HÁLUM I DIBISION AGRIKUTTURA**



I AKSION NI MA'INTENSIONA NI PARA U MA'ADÁPTA ESTI I MANMAPROPONI NA REGULASION SIHA: I Commonwealth gi Sangkattan na Islas Mariáñas, I "Division Agrikultura gi Dipáttamentun Guinaha i Tanu' (i DLNR), ma'intensiona para u ma'adápta kumu petmanienti i regulasion, sigun gi maneran i Ákton Administrative Procedure, 1 CMC § 9104(a). I regulasion siha para u ifektibu gi halum dies (10) dihas dispues di adáptasion yan publikasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

ATURIDÁT: I Dipáttamentun Guinaha I Tanu' ma'aturisa para u adápta i areklamentu yan i regulasion siha para u inadilántão i ubligasion-ña yan responsabilidát-ña (1 CMC § 2654).

I TEMA YAN SUSTÁNSIAN I PALÁBRA SIHA: I manmaproponi na regulasion inestaplesi i nisisdát siha para i "Kagman Farm Plot" na prugrâma gi halum i Commonwealth gi Sangkattan na Islas Mariáñas.

I SUHETU YAN ASUNTU SIHA NI TINEKKA: I manmaproponi na regulasion inestaplesi i nisisdát siha para i "Kagman Farm Plot" na prugrâma gi halum i Commonwealth gi Sangkattan na Islas Mariáñas.

DIREKSION PARA PINE'LU YAN PUPBLIKASION: I nutisian i manmaproponi na regulasion debi na u mapupblika gi halum Rehistran Commonwealth gi halum seksiona ni manmaproponi yan nuebu na ma'adápta na regulasion, 1 CMC § 9102(a)(1), yan u mapega gi kumbinienti na lugát siha gi halum i civic center yan i ufisinan gubietnamentu siha gi kada distritun senadot, parehu English yan prinsipát na lingguáhin natibu. (1 CMC § 9104(a)(1)).

PARA U MAPRIBENIYI UPIÑON SIHA: Na'hanao pat intrega hálum i upiñon-mu para as Anthony T. Benavente, Sekretariun DLNR, Re: "Regulasion siha para i "Kagman Farm Plot," gi sanhilu' na address pat i numirun fax. I upiñon siha debi na u hálum gi halum trenta (30) dihas ginin i fetchan i publikasion esti na nutisia. Put fabot na'hálum iyom-mu data, views pat atgmentu siha (1 CMC § 9104(a)(2)).

Esti i manmaproponi na regulasion siha inaprueba ginen i Sekretáriun DLNR gi Mâtsu 15, 2021.

Nina'hálum as: _____


ANTHONY T. BENAVENTE
Sekretáriu, Dipáttamentun Guinaha I Tanu'


9/23/2021

Fetcha

Rinisibi as:



MATHILDA A. ROSARIO

Ispisiât na Ayudânti para i Aministrasion

04/27/21

Fetcha

Pine'lu yan
Ninota as:



ESTHER SN. NESBITT

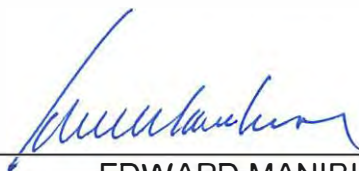
Rehistran Commonwealth

04.27.2020

Fetcha

Sigun i 1 CMC § 2153(e) (I Abugâdu Henerât ma'aprueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) (hentan inapruuban Abugâdu Henerât) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba kumu fotma yan sufisienti ligât ginin i CNMI Abugâdu Henerât yan debi na u mapublika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha).

Mafetcha gi diha 27 gi April, 2021.



EDWARD MANIBUSAN

Henerât Abugâdu



**ARONGORONGOL TOULAP REEL POMMWOL
MWÓGHUTUGHUTÚL BWULASIYOL FALÚW ME
FOWFISCHIL FALÚW “DIVISION OF AGRICULTURE”**



MÁNGEMÁNGIL MWÓGHUT REEL POMMWOL MWÓGHUTUGHUT: Commonwealth Téél Falúw kka Efáng Ilól Marianas, Bwulasiyol Falúw me Fowfischil Falúw (“DLNR”), “Division of Agriculture” re mángemángil rebwe adóptaa mwóghut kkal bwe ebwe Iléghló, sáangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104 (a). Ebwe bwunguló Mwóghutughut kkal Ilól seigh (10) ráál mwiril aar adóptááil me akkatééwowul me Ilól Commonwealth Register (1 CMC § 9105(b)).

BWÁNGIL: Eyoor bwángil Bwulasiyol Falúw me Fowfischil Falúw reel rebwe adóptááli allégh me mwóghutughut ikka e ffil Ilól Iemelemil mwotal (1 CMC § 2654).

KKAPASAL ME WEEWEL: Pommwol mwóghutughut kka e ayoorai itittiwel ikka e ffil ngáli progróomal “Kagman Farm Plot” me Ilól Commonwealth Téél Falúw kka Efáng Ilól Marianas.

KKAPASAL ME ÓUTOL: Pommwol mwóghutughut kkal e ayoorai itittiwel ikka e ffil ngáli progróomal “Kagman Farm Plot” me Ilól Commonwealth Téél Falúw kka Efáng Ilól Marianas.

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Arongorongol Pommwol mwóghutughut yeel ebwe akkatééwow me Ilól Commonwealth Register Ilól tálil pommwol me ffél mwóghutughut ikka ra adóptááil (1 CMC § 9104 (a)(1) me ebwe appaschetá Ilól civic center me bwal Ilól bwulasiyol gobetnameento Ilól senatorial district, fengál reel English me mwáliyaasch (1 CMC 9104(a)(1)).

REEL ISIISILONGOL KKPAS: Afanga ngáre bwughiló yóómw ischil kkapas ngáli Anthony T. Benavente, Sekkretóoriyol DLNR, Re: Mwóghutughutúl Kagman Farm Plot, reel féléfél iye e lo weiláng ngáre numurol fax. Ebwe toolong ischil kkapas Ilól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views, ngáre angiingi (1 CMC § 9104 (a)(2)).

Aa átirow pommwol mwóghutughut kkal sáangi Sekkretóoriyol DLNR wóól Mááilap 15, 2021.

Isáliyalong: _____

ANTHONY T. BENAVENTE

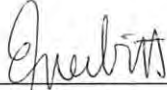
Sekkretóoriyol, Bwulasiyol Falúw me Fowfischil Falúw

4/23/2021

Ráál

Bwughiyal: 
MATHILDA A. ROSARIO
Special Assistant ngáli Administration

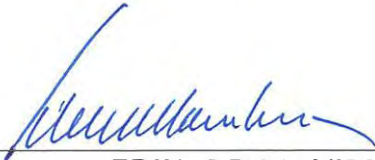
04/27/21
Ráál

Ammwelil: 
ESTHER SN. NESBITT
Commonwealth Registrar

04.27.2021
Ráál

Sáangi 1 CMC § 2153(e) (átirowal AG reel mwóghutughut ebwe arongowow bwe aa lléghló reel fféerúl) me 1 CMC 9104(a)(3) (sáangi átirowal AG) reel pommwol mwóghutughut ikka e appasch bwe ra takkal amwuri fischiiy me aa lléghlóreel fféeríl me legal sufficiency sáangi Soulemelemil Allégh Lapalal CNMI, me ebwe akkatééwow (1 CMC §2153(f) (arongowowul allégh me mwóghutughut.

Aghikkilátiw wóol 27 ráálil April, 2021.


EDWARD MANIBUSAN
Soulemelemil Allégh Lapalal

1. **§85-10 1.100 Kagman Farm Plot Program Regulations**

2. **§85-10 1.105 Purpose**

The purpose of this permit is to established regulations governing the administration and management of the Kagman Farm Plot program at the Division of Agriculture under the Department of Lands and Natural Resources.

3. **§85-10 1.110 Permit**

The permit will show the date, the name of applicant, his or her assigned farm plot, the size of the farm plot, the farm plot number and a map showing the location of the property on the island of Saipan.

(a) This permit shall be subject to all existing easements, roadways, and rights-of-way across or through the permitted property. The DLNR retains all rights of ingress and egress from those portions of the Farm Plot where public utilities and other improvements are located. This Permit shall not impair, and shall not be construed to impair, the DLNR's right to enter the Farm Plot for the following: to construct, maintain, operate, and repair public utilities, or parts thereof (including electric power transmissions, telegraph lines, telephone lines, pipelines, and drainage systems); to construct, maintain, operate, or repair roads; or to perform any other work for a public purpose.

(b) DLNR reserves the rights to all mineral resources and underground resources on the Farm Plot, and retains the right of access to and use of such parts of the surface of the premises as may be necessary for the mining and saving of said minerals. This permit does not convey any mining rights or any rights in the minerals to the Permittee.

(c) The permit shall be restricted to citizens and nationals of the United States; provided that they are domiciliaries of the Commonwealth, as prescribed by 2 CMC § 4117.

4. **§85-10 1.115 NON-ASSIGNMENT OF PERMIT**

This permit or any interest therein shall not be assigned or otherwise transferred by Permittee to a corporation, partnership, or other individual. Any purported assignment or transfer of this permit, whether written or verbal, shall be null and void.

5. **§85-10 1.120 NATURE AND TERM OF PERMIT**

(a) This Permit authorizes the Permittee to enter and use the Farm Plot for farming. This Permit does not in any manner, substance, or form grant any property interest, whether freehold or leasehold, in the Farm Plot, and it shall not be construed to do so.

(b) The term of the Permit shall commence on the date the permit was issued.

6. **§85-10 1.125 ANNUAL PERMIT FEE**

(a) The Permittee shall pay a permit fee of \$0.02 per square meter per annum for the use of the Farm Plot. The permittee shall deliver the annual permit fee to the Department of Public Lands. The fee shall be paid by check payable to the Department of Public Lands and the money will be deposited in a special account to be established for this purpose.

(b) The Permittee shall pay the above fee on or before the date of the last signature on this permit; the Permit shall not become effective until the initial payment is made. The Permittee shall make all subsequent yearly payments on the anniversary date of the permit.

(c) Failure to pay the required annual permit fee within 30 days of the due date shall be grounds for termination of the permit.

7. §85-10 1.130 RENEWAL

(a) This permit may be extended for any term up to five (5) years upon the request of the Permittee and with the approval of DLNR. If the Permittee wishes to renew the permit, the Permittee shall send or otherwise deliver a written request of renewal to the Secretary of DLNR or his designee at least sixty (60) days before the expiration of this permit.

(b) The Secretary of DLNR will not approve the renewal if the Permittee has failed to comply with the conditions of this permit or the general conditions governing the use of farm plots. If the Secretary of DLNR approves the request for renewal, the renewal will take the form of newly executed permit between DLNR and the Permittee, with the terms and conditions and permit fee to be negotiated prior to renewal. DLNR is under no obligation to renew the permit.

8. §85-10 1.135 LIMITATIONS ON USE; ANNUAL CERTIFICATION

a. Use and Inspection

i. The Permittee shall use the Farm Plot for farming purposes in accordance with the conditions of this Permit and the applicable regulations. The Permittee's failure to use the Farm Plot for farming purposes in accordance with the conditions of this permit and the applicable regulations shall be grounds for termination of the Permit.

ii. DLNR shall inspect the Farm Plot at least once per year and annually certify in writing that the Permittee is using the Farm Plot for farming purposes and in accordance with the conditions of this Permit. If DLNR inspects the Farm Plot and determines that the Permittee is not using the Farm Plot in accordance with this Permit, DLNR shall terminate the Permit in accordance with Article 11.

b. Perennial Crops

i. Perennial crops include, but are not limited to, the following: coconut, betel nut, citrus fruits, and mango.

ii. The Permittee shall not plant perennial crops on the Farm Plot, unless otherwise excepted by the Director of Agriculture ("Director"). Bananas and papayas may be planted along borders of the Farm Plot and around temporary farm buildings only.

iii. The Director may recommend and approve perennial crops to be planted along borders to serve as infield windbreaks, to control soil erosion as part of a conservation plan, to protect water quality, or to conserve water.

- c. **Structures and Improvements**
- i. The Permittee may not erect temporary or permanent structures on the Farm Plot without first obtaining written permission from the Director. The Director may authorize the Permittee to erect a structure if he or she determines that the structure is consistent with the use of the land for farming purposes. Examples of permissible structures include, but are not necessarily limited to, barns, storage sheds, and concrete water tanks.
 - ii. Residential structures. Whether temporary or permanent, residential structures are not consistent with use of the land for farming and shall not be erected on the Farm Plot. These structures are prohibited by 2 CMC § 4117.
 - iii. Outhouses. Outhouse toilets are permissible provided that they are constructed and used in a manner conforming to the sanitation standards established by the Bureau of Environmental Health, Commonwealth Healthcare Corporation. The Permittee must obtain a permit from the community Sanitation Services and the Division of Environmental Quality before beginning construction of an outhouse.
 - iv. Hydroponic Facilities. Hydroponic facilities may be built in areas where the Director determines that the soil is not of sufficient depth to make crop farming feasible. The Permittee's permit must specifically provide that hydroponic farming is permitted. Prior to beginning construction of hydroponic facilities, the Permittee must obtain all necessary permits and the approval of the Secretary of DLNR. Permittee shall bear all costs associated with building hydroponic facilities on the Farm Plot.
- d. **Pesticides**
- i. If Permittee uses pesticides and/or fertilizers, such use shall be in compliance with the rules and regulations set forth by the Bureau of Environmental and Coastal Quality (BECQ).
 - ii. Permittee must ensure that BECQ locally certifies all pesticide applicators that he or she is using on their crops. Permittee shall submit to the Division of Agriculture Plant Industry Office a copy of the certification(s) of the pesticides applicator(s). Any use of restricted pesticides on the premises of the Permittee without a valid certification required by the Bureau of Environmental and Coastal Quality is strictly prohibited and could result in termination of the Permit.
 - iii. Pesticides, insecticides, fungicides, or other chemicals must be secured in a storage area to which no unauthorized persons can gain access. Pesticides should be stored separately from fertilizers. Pesticides can potentially contaminate fertilizers if they are stored together. All empty pesticide containers, such as cans and bottles as well as excess pesticides, must be stored in a secured structure until they can be properly disposed of. The Permittee is solely responsible for preventing poisoning or other injury to a person who comes into the farm plot, whether or not he is authorized or invited to do so. Neither the Commonwealth Government nor any of its agents assume any responsibility or liability arising from or related to the storage or use of chemicals by Permittee.

- e. **Animals**
 - i. Raising of livestock, poultry, and domestic pets within the defined Farm Plots is prohibited as the most appropriate use for the farm plots is for agricultural purposes.

9. §85-10 1.140 MAINTENANCE OF PLOTS

a. Safe and Sanitary

- i. Permittee shall maintain his or her assigned Farm Plot in a safe and sanitary condition.
- ii. **Rodent control:** Permittee shall be responsible for rodent control on the assigned Farm Plot and is expected to participate in Rodent Control Programs in cooperation with the Division of Agriculture. Crop residue should be promptly plowed or disked under, and trash shall be removed regularly to minimize rodent populations.
- iii. **Conservation Plan:** Each Permittee will develop and implement a conservation plan that is mutually agreed upon by the Permittee, Division of Agriculture, and the Saipan and Northern Islands Soil and Water Conservation District (SWCD). The Permittee shall develop a conservation plan to address erosion control, protection of water, conservation of water, and benefits derived from other natural resources. Technical assistance in making a conservation plan can be obtained from the Natural Resources Conservation Services (NRCS), Saipan and Northern Islands Soil and Water Conservation District (SWCD).
 - a. A total resource management system approach is taken with the interdependency of soil, water, and relates plant and animal resource being recognized. Environmentally safe systems, which are in harmony with the area, are sought.
 - b. Permanent conservation practices such as windbreakers, diversion canals, drainage ditches, and waterways installed by the Division of Agriculture that benefits more than one farm plot will be maintained by the Division. Permanent conservation practices installed as part of the Permittee's conservation plan, such as windbreaks, hedgerows, diversion, waterways, or irrigation systems that benefit individual farm plots will be maintained by the Permittee. No permanently installed conservation systems shall be removed or destroyed without the express written consent of the Director of Agriculture. Any destruction of a conservation practice within the Permittee's assigned plot shall be the responsibility of the Permittee to replace and/or reconstruct a Permittee's own expense. The Permittee shall have made every effort possible to implement the approved conservation plan as scheduled in order to prevent soil erosion on their assigned plot.
 - c. The Saipan and Northern Islands Soil and Water Conservation District will be responsible for maintenance and operation of permanent conservation practices installed as part of the Kagman Watershed Project. These practices include waterways, mainline irrigations system, drop

structures, diversion, wells, wetlands and reservoirs that benefit all Kagman Local Farm Plots.

d. The Bureau of Environmental and Coastal Quality: Permittees must comply with all BECQ regulations and recommendations regarding the application, storage and handling of pesticides.

b. Full Utilization

1.. Permittee must fully utilize his or her farm plot to the maximum extent possible throughout the growing season.

a. "Fully Utilize" is defined as cultivating and growing crops for harvest on at least seventy-five (75%) of the assigned farm plots.

b.. "Growing Season" is defined as the period of absence of adverse climatic conditions, such as typhoon and flooding rains.

c. Land lying fallow shall not be considered under cultivation when determining whether the farm plot is being fully utilized if the Permittee has obtained certification from the Director to allow the land to lie fallow. To obtain certification to fallow land, Permittee shall submit a request to the Director with the basis for and duration of the period of fallow. If the Director approves and certifies the request, then the fallowed land shall be excluded from the utilization determination for the period stated in the certification.

d. Permittee may use assigned plots on a year-round basis (i.e. at times outside of the growing season) at his or her own risk by implementing conservation practices to protect the land from erosion during the rainy season.

e. Failure to fully utilize the Farm Plot during the growing season may result in termination of the Permit.

f. If Permittee has a permit for more than one farm plot, the Division of Agriculture shall treat all such plots as one plot, for purpose of the 75% full utilization requirement. Plots may not be subdivided in order to meet the 75% full utilization requirement.

10. §85-10 1.145 PERMITTEE EMPLOYEES

a. Registration: Before the permittee allows his employees (including farm laborers) to begin working on his plot(s), he shall submit to the Division of Agriculture office the names of all of his employees, and documents to identify the residence status of each employee including but not limited to: a copy of employee's driver's license, if any; a photograph of the employee; the employee's social security number; and a copy of the employee's work permit. If the employee has previously been employed by the Permittee, he shall also submit a copy of the employee's paycheck stub. An updated list of names of all employees or farm laborers must be submitted annually on each anniversary date of the permit. In addition, the Permittee must submit the name of and documentation for any newly hired employee, prior to that employee stating work at the farm plot. Employee registration must be kept current.

b. Unauthorized Employee: The Director of Agriculture or his representative may evict any person working at the Permittee's assigned plot who is not registered with the Division of Agriculture as an employee of the Permittee. Only those employees registered with the Division of Agriculture will be considered authorized employee of the Permittee.

11. §85-10 1.150 NO OBLIGATION TO PROVIDE WATER OR UTILITY SERVICES

DLNR and the Commonwealth Government do not have an obligation to provide the Permittee with water or other utility services, and this Permit shall not be construed to create such an obligation. It is expressly understood that the Permittee is responsible for obtaining water and utility services at Permittee's sole cost and expense, consistent with Sections 1 and 4 of the Regulations Of The Use Of Irrigation Water, published in the Commonwealth Register on October 26, 2004, Volume 26 Number 10, page 22988.

12. §85-10 1.155 DESTRUCTION OF GOVERNMENT PROPERTY

a. Permittee shall be responsible for any damage to or removal and destruction of any property of DLNR or the Commonwealth Government caused by the Permittee during Permittee's use and occupancy of the Farm Plot. The Permittee shall promptly restore, repair, or replace the injured property to the satisfaction of DLNR, or otherwise provide adequate compensation, in an amount determined by DLNR, to DLNR to account for the destruction or damage. Failure to make timely repairs required under this Article could subject the Permit to termination.

b. If the Farm Plot has improvements designed and/or installed by the Natural Resources Conservation Service ("NRCS") of the United States Department of Agriculture ("USDA"), the Permittee may not destroy, remove, or otherwise alter such improvements without prior written approval from NRCS. Such improvements may include, but are not limited to the following: irrigation systems, including buried pipelines; above-ground risers and all necessary appurtenances; water storage tanks; tile drains and underground outlets; water diversions, hillside ditches, grasses waterways, and lined waterways; composting facilities; terraces; hedgerows; and windbreakers. If Permittee causes an improvement made by NRCS to be destroyed, altered, or removed without prior approval of NRCS, the Permittee shall promptly restore, repair, or replace the improvement to the satisfaction of NRCS, or otherwise pay for the costs of restoring, repairing, or replacing the improvement.

13. §85-10 1.160 TERMINATION OF PERMIT

a. It is expressly understood and agreed that DLNR may terminate this permit at any time if the Permittee fails to use the Farm Plot for farming purposes or otherwise violates the Permit conditions.

b. To terminate this Permit before its natural expiration date, DLNR shall provide the Permittee with sixty days' advance, written notice. The notice shall state the reason(s) for termination, including any relevant facts, and shall provide a procedure through which the Permittee can show that he or she is in compliance with this Permit or otherwise challenge the basis for termination. DLNR shall have the right to re-enter and take possession of the Farm Plot, or any part thereof, upon the expiration of the sixty days.

c. The Permittee may terminate this permit at any time by giving thirty days' advance notice to DLNR. Permittee shall be responsible for any losses associated with early termination.

14. §85-10 1.165 VACATING THE PREMISES

Upon the expiration or earlier termination of this permit, the Permittee shall quietly and peacefully vacate the premises and surrender the possession thereof. Upon the failure or neglect of the Permittee to remove his property from the premises, DLNR or its agents may enter the said premises and remove all persons and property therefrom. Such removal shall be at the cost and expense of the Permittee and no claim for damage of any nature whatsoever against DLNR or its agents thereof shall be created by or made on account of such removal.

15. §85-10 1.170 HOLD HARMLESS AND INDEMNITY CLAUSE

Permittee shall protect, defend, and hold the Government of the Commonwealth of the Northern Mariana Islands, its officials, employees, agents and successors in interests completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to attorney fees, court costs, and expert fees), of any nature whatsoever arising out of the Permittee or its officers, agents, employees, contractors, subcontractors, or invitees' use of this Permit and/or the use or occupancy of the Farm Plot regardless of where the injury, death, or damage may occur. The provisions of this section shall be deemed to be a separate contract between the parties and shall survive the expiration or any default, termination or forfeiture of this Permit.

16. §85-10 1.175 SUCCESSORS AND ASSIGNS

DLNR and the Division of Agriculture herein shall include their lawful successor agencies. Permittee shall include Permittee's lawful successor and assigns, to the extent otherwise allowed by this permit.

Successor: DLNR - Division of Agriculture

17. §85-10 1.180 COMPLIANCE WITH LAW

Permittee shall not use the farm plot for any purpose in violation of any applicable Federal or Commonwealth Law, regulation, or order, as such statute, regulation, or order now exists, or may hereafter provide, concerning the use, occupancy, and safety of the farm plot. Permittee shall notify the Director of Agriculture prior to performing any draining, dredging, or filling activities, and any such activities shall be conducted in compliance with applicable laws and regulations. The Permittee shall obtain required government permits prior to conducting any type of activity for which a permit is required on the Farm Plot.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
CIVIL SERVICE COMMISSION
OFFICE OF PERSONNEL MANAGEMENT



JAKE MARATITA
 Chairperson, CSC

P.O. BOX 5153 CHRB, SAIPAN, MP 96950 5153
 CSC TEL NO: (670) 233-1606 | FAX NO: (670) 233-4096
 OPM TEL. NO: (670) 234-6925 / 6958 / 8036 | FAX NO. (670) 234-1013

CSC website: <http://www.cnmicsc.net> | OPM website: <http://www.cnmiopm.net> FRANCES TORRES-SALAS
 Director of Personnel

NOTICE OF EXPIRY OF FINANCIAL AUSTERITY MEASURES (NMIAC § 10-20.2-1101)

A Notice of Expiry of Financial Austerity Measures (i.e., Part XII.A of PSSR&R as codified in NMIAC § 10-20.2-1101) was published in the Commonwealth Register Vol. 41, No. 03, pgs. 041614-041615, on March 28, 2019.

By the terms of Part XII.A of the PSSR&R, the suspension of increases to employees' salaries, reallocation or reclassification of positions, and step increases based on attendance at workshops or training programs shall expire upon Notice in the Commonwealth Register.

Thus, in accordance with the provision of the PSSR&R:

Upon expiration of the suspension of the pay increases employees who qualified for the increases during the time of suspension shall receive the pay increases effective the date the suspension expired. The increases shall not be made retroactive to any date that occurred during the time of suspension.

This notice of expiry shall be implemented 30 days after the date of its publication in the Commonwealth Register.

By signature below, I hereby certify that the Notice of Expiry is true, correct, and complete. I further require and direct that this Notice be published in the Commonwealth Register.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the 12th day of April 2021 at Saipan, Commonwealth of the Northern Mariana Islands.

 Jake Maratita
 Chairperson, Civil Service Commission

April 12, 2021

 Date

Filed and
 Recorded by:

 Esther SN Nesbitt
 Commonwealth Registrar

04.27.2021

 Date

1 that the Complaints Chao Ting Wang, Chia Hong Chang, and Yu Ren Wang were unable to return
2 due to visa issues but are requesting to appear telephonically.²

3 Considering the Complainants' departure from the CNMI since December 2019 and the
4 parties' non-appearance at the Administrative Hearing, the undersigned finds dismissal is
5 warranted. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
DISMISSED.

6 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
7 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
8 this Order.³

9
10 So ordered this 30th day of March, 2021.

11
12 /s/

13 **JACQUELINE A. NICOLAS**
14 Administrative Hearing Officer

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25 ² The Department's Administrative Hearing Office is a creature of statute and only holds the authority specifically
26 granted to it under statute or regulation. See NMIAC § 80-20.1-001. There is no applicable rule or regulation that
27 allows the undersigned to conduct hearings or take testimony outside the CNMI. Moreover, the undersigned must be
28 cautious to avoid exceeding scope of authority or implicating other state or international laws for conducting hearings
or taking testimony outside the CNMI. Accordingly, counsel's request to have complainants appear telephonically
from Taiwan is denied.

³ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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In Re Matter of:) **Labor Case No. 20-016**
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Raul P. Doce,)
)
Complainant,) **ADMINISTRATIVE ORDER**
)
v.)
)
The Rose Empire Corporation,)
)
Respondent.)

I. INTRODUCTION

This matter came for an Administrative Hearing on March 2, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to technical difficulties, the hearing was held in person. Complainant Raul P. Doce (hereinafter, "Complainant") were present and self-represented. Respondent The Rose Empire Corporation (hereinafter, "Respondent") was present and represented by its President, Jennifer Orpiano. The Department's Enforcement, Compliance, and Monitoring Section ("Enforcement") was also present and represented by Acting Director Jeffrey Camacho. Interpreter Rochelle Tomokane facilitated communications during the Administrative Hearing. There were no other witnesses to give testimony at the hearing.

Exhibits:

1. Exhibit 1: Complainant's Complaint filed May 27, 2020;
2. Exhibit 2: Respondent's Answer filed June 22, 2020;
3. Exhibit 3: Enforcement's Determination filed December 3, 2020;
4. Exhibit 4: A copy of Complainant's Employment Verification;
5. Exhibit 5: A copy of Complainant's approved CW-1 Petition from valid from December 4, 2018 to September 30, 2019;
6. Exhibit 6: A copy of Complainant's CW-1 Petition 2019 to 2020;
7. Exhibit 7: A copy of Complainant's Employment Contract;
8. Exhibit 8: A copy of Respondent's official, signed timesheets and pay stubs (August 2019 to January 2020); and

1 9. Exhibit 9: A copy of Respondent's Annual Corporate Report.

2 Based on the evidence presented and applicable law, judgment is entered in favor of Complainant
3 in the amount of \$250 in unpaid wages.

4 **II. BACKGROUND & PROCEDURAL HISTORY**

5 On May 27, 2020, Complainant filed a labor complaint for unpaid wages, among other things.
6 On June 22, 2020, Respondent filed a written answer, denying the allegations in the complaint.
7 Further, Respondent filed timesheets records demonstrating full payment based on the hours
8 Complainant reported to the company. On June 24, 2020, the matter was referred to Enforcement
9 for further investigation. Enforcement investigated the claims and allegations by both parties. On
10 December 3, 2020, Enforcement filed a written determination. Therein, Enforcement
11 recommended payment of \$250 in wage discrepancy issues and dismissal of claims outside the
12 six-month statute of limitations. The matter was scheduled for a hearing, to which both parties
13 appeared.

14 **III. FINDINGS OF FACT**

15 In consideration of the evidence provided and credibility of witness testimony, the
16 undersigned issues the following findings of fact:

- 17 1. Complainant is a Commonwealth Only Transitional Worker ("CW-1").¹ As a CW-1,
18 Complainant was only legally authorized to work for Respondent as a full-time
19 commercial cleaner at the rate of \$7.25 per hour.²
- 20 2. Complainant worked at a number of Respondent's locations, based on the company's
21 need. Complainant did not have a set or pre-established work schedule. Given the nature
22 and locations of his work, Respondent did not require Complainant to "clock in" for work.
23 Instead, Complainant was responsible for accurately keeping and reporting his own time.
- 24 3. Respondent encouraged employees to stay within 40-hour work weeks but did not restrict
25 employees ability to report time actually worked. If employee reported hours in excess of
26 40 hours, Respondent would make sure to pay the overtime wages.
- 27 4. There is a discrepancy between Complainant's hand-written time sheets submitted with
28 the complaint and the official business records. Complainant's hand-written time sheets

¹ Exhibit 6.

² Exhibit 4 and 6.

1 were not admitted into evidence because they were not deemed to be credible³, as opposed
2 to the official business records, prepared by Complainant and submitted to Respondent
3 for processing.

4 5. Complainant believed that Mr. Ulysses Gary Orpiano was his supervisor. While Mr.
5 Orpiano is the company vice president's father, Mr. Orpiano is not employed by
6 Respondent and was never Complainant's supervisor at work.⁴

7 6. At times, Mr. Orpiano, would ask Complainant to assist on various construction projects
8 on Saipan. While Respondent would sometimes allow Complainant to assist on outside
9 construction projections, there was no written agreement, authorization to transfer
10 employment, or any other documents to substantiate employment between Complainant
11 and Mr. Orpiano.

12 7. The majority of Complainant's allegations is regarding work performed by Complainant
13 for Mr. Orpiano.

14 8. Based on the verified and official timesheet records, Complainant was paid for hours
15 reported to Respondent, with the exception of \$250 during pay period March 2 to March
16 15, 2020.⁵

17 9. Due to the health and economic impact of the COVID-19 pandemic, Complainant stopped
18 working March 4, 2020.

19 IV. CONCLUSIONS OF LAW

20 In consideration of the above-stated findings and applicable law, the undersigned issues the
21 following conclusions of law:

22 **1. The six-month statute of limitations time-bars a part of Complainant's claim.**

23 Pursuant to 3 CMC § 4962, "[n]o labor complaint may be filed more than six months after the
24 date of the last-occurring event that is the subject of the complaint, except in cases where the
25 actionable conduct was not discoverable upon the last-occurring event." "If a complaint is not
26 timely filed, the hearing office *shall* dismiss the complaint with prejudice." NMIAC § 80-20.1-
27 465(e). Emphasis added. "The hearing officer may, after notice and an opportunity to be heard is

28 ³ The Complainant's handwritten time sheet records were written on notebook paper, in preparation for the labor hearing. These personal records were not prepared contemporaneously nor verified by the Employer.

⁴ See Exhibit 9.

⁵ Exhibits 3 and 8.

1 provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without
2 merit.” 3 CMC § 4947.

3 Here, Complainant filed his complaint on May 27, 2020. In the complaint, Complainant
4 alleges unpaid wages from July 2019 to April 2020. In accordance with the above-stated six-
5 month statute of limitations, Appellant cannot recover for claims arising before November 27,
6 2019. Accordingly, Complainant’s claims from July 2019 to November 27, 2019 are time-barred
and must be dismissed.

7 **2. Complainant is owed \$250 in unpaid wages.**

8 Every employer must pay each employee employed by him or her the appropriate minimum
9 wage. *See* 4 CMC § 9221. “Every employer shall keep in or about the premises wherein any
10 employee is employed a record of the name, address and occupation of each employee, of the
11 amount paid each pay period to each employee, of the hours worked each day and each workweek
12 by each employee, and of other information and for periods of times [as required.]” 3 CMC §
13 9232(b). “Every employer shall furnish each employee at every pay period a written statement
14 showing the employee’s total hours worked; overtime hours; straight-time compensation;
15 overtime compensation; other compensation; total gross compensation; amount and purpose of
16 each deduction; total net compensation; date of payment; and pay period covered.” 3 CMC §
9232(c).

17 In this case, Respondent submitted a number of records to show time records and pay stubs
18 for the relevant time period. Upon careful review, Enforcement found that Respondent does not
19 have records to confirm payment of \$250 owed to Complainant for wages accrued during the
20 work week of March 2, 2020 to March 15, 2020. Complainant stated he only received partial
21 payment and is still owed \$250. Respondent does not have other evidence to demonstrate payment
22 and does not contest the issue. Accordingly, based on the evidence provided and applicable law,
23 Complainant is owed \$250 in unpaid wages.

24 **V. JUDGMENT**

25 Based on the above-stated findings of fact and conclusions of law, judgment is entered in
26 favor of Complainant in the amount of \$250 USD. Respondent shall make payment to
27 Complainant by delivering a check or money order to the Administrative Hearing Office, on or
before April 23, 2021, close of business.

28 ///

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.⁶

4 So ordered this 5th day of April, 2021.

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6 /s/
JACQUELINE A. NICOLAS
7 Administrative Hearing Officer

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⁶ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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4	In Re the Matter of:)	Labor Case No. 20-030
5	Mustafa Sahik Turan,)	
6)	
7	Complainant,)	ORDER OF DISMISSAL
8)	
9	v.)	
10	Imperial Pacific International (CNMI), LLC,)	
11)	
12	Respondent.)	

This matter came for an Order to Show Cause Hearing on March 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Mustafa Sahik Turan (“Complainant”) was not present and counsel Juan Lizama declined to participate in the hearing.¹ Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, the Order to Show Cause was issued on March 2, 2021 and served on March 3, 2021 pursuant to NMIAC § 80-20.1.475(d)(4), using contact information provided by the parties. During the hearing, Enforcement indicated that Complainant departed the CNMI in October and has not been in contact with the Department. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on

¹ When counsel was called for the hearing, Counsel indicated he had a federal court hearing that was scheduled two days ago then hung up. Notably, counsel did not file any request or motion to continue this matter. Further, the verbal notification at the onset of the telephonic hearing is untimely.

1 above, the undersigned finds that the parties failed to show good cause as to why this case should
2 not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
3 **DISMISSED.**

4 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
5 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
6 this Order.²

7 So ordered this 23rd day of March, 2021.

8
9 /s/

10 **JACQUELINE A. NICOLAS**
11 Administrative Hearing Officer
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28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
2 DEPARTMENT OF LABOR
3 ADMINISTRATIVE HEARING OFFICE

4	In Re the Matter of:	)	Labor Case No. 20-031
5	Imdat Dogan,)	
6	Complainant,	)	ORDER OF DISMISSAL
7	v.)	
8	Imperial Pacific International (CNMI), LLC,)	
9	Respondent.)	
10)	
11)	

12 This matter came for an Order to Show Cause Hearing on March 23, 2021 at 9:00 a.m. at
13 the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the
14 hearing was held telephonically. Complainant Imdat Dogan(“Complainant”) was not present and
15 counsel Juan Lizama declined to participate in the hearing.¹ Respondent Imperial Pacific
16 International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in
17 the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring
18 Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

19 Here, the parties were given sufficient notice and opportunity to respond as to why this
20 case should not be dismissed. Specifically, the Order to Show Cause was issued on March 2, 2021
21 and served on March 3, 2021 pursuant to NMIAC § 80-20.1.475(d)(4), using contact information
22 provided by the parties. During the hearing, Enforcement indicated that Complainant departed the
23 CNMI in October and has not been in contact with the Department. Enforcement further indicated
24 that requests for documents and notices to Respondent were properly served but remain
25 unanswered. Specifically, Respondent designates an email address for electronic service of
26 process but does not have anyone authorized to appear for investigations and hearings. Based on
27 above, the undersigned finds that the parties failed to show good cause as to why this case should

28 ¹ When counsel was called for the hearing, Counsel indicated he had a federal court hearing that was scheduled two days ago then hung up. Notably, counsel did not file any request or motion to continue this matter. Further, the verbal notification at the onset of the telephonic hearing is untimely.

1 not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
2 **DISMISSED.**

3 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
4 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
5 this Order.²

6 So ordered this 23rd day of March, 2021.

7
8 /s/

9 **JACQUELINE A. NICOLAS**
10 Administrative Hearing Officer

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28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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In Re the Matter of:)	Labor Case No. 20-032
)	
Nuri Ciftci,)	
)	
Complainant,)	ORDER OF DISMISSAL
)	
v.)	
)	
Imperial Pacific International (CNMI), LLC,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on March 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Nuri Ciftci (“Complainant”) was not present and counsel Juan Lizama declined to participate in the hearing.¹ Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, the Order to Show Cause was issued on March 2, 2021 and served on March 3, 2021 pursuant to NMIAC § 80-20.1.475(d)(4), using contact information provided by the parties. During the hearing, Enforcement indicated that Complainant departed the CNMI in October and has not been in contact with the Department. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on above, the undersigned finds that the parties failed to show good cause as to why this case should

¹ When counsel was called for the hearing, Counsel indicated he had a federal court hearing that was scheduled two days ago then hung up. Notably, counsel did not file any request or motion to continue this matter. Further, the verbal notification at the onset of the telephonic hearing is untimely.

1 not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
2 **DISMISSED.**

3 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
4 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
5 this Order.²

6 So ordered this 23rd day of March, 2021.

7
8 /s/

9 **JACQUELINE A. NICOLAS**
10 Administrative Hearing Officer

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28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re the Matter of:

) Labor Case No. 20-033

Saban Aslan,

)

)

)

Complainant,

) ORDER OF DISMISSAL

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v.

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Imperial Pacific International (CNMI), LLC,

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)

Respondent.

)

This matter came for an Order to Show Cause Hearing on March 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Saban Aslan (“Complainant”) was not present and counsel Juan Lizama declined to participate in the hearing.¹ Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, the Order to Show Cause was issued on March 2, 2021 and served on March 3, 2021 pursuant to NMIAC § 80-20.1.475(d)(4), using contact information provided by the parties. During the hearing, Enforcement indicated that Complainant departed the CNMI in October and has not been in contact with the Department. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on above, the undersigned finds that the parties failed to show good cause as to why this case should

¹ When counsel was called for the hearing, Counsel indicated he had a federal court hearing that was scheduled two days ago then hung up. Notably, counsel did not file any request or motion to continue this matter. Further, the verbal notification at the onset of the telephonic hearing is untimely.

1 not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
2 **DISMISSED.**

3 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
4 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
5 this Order.²

6 So ordered this **23rd** day of March, 2021.

7
8 /s/
9 **JACQUELINE A. NICOLAS**
Administrative Hearing Officer

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28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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In Re the Matter of:)	Labor Case No. 20-034
Bayram Kara,)	
Complainant,)	ORDER OF DISMISSAL
v.)	
Imperial Pacific International (CNMI), LLC,)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on March 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Bayram Kara (“Complainant”) was not present and counsel Juan Lizama declined to participate in the hearing.¹ Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, the Order to Show Cause was issued on March 2, 2021 and served on March 3, 2021 pursuant to NMIAC § 80-20.1.475(d)(4), using contact information provided by the parties. During the hearing, Enforcement indicated that Complainant departed the CNMI in October and has not been in contact with the Department. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on above, the undersigned finds that the parties failed to show good cause as to why this case should

¹ When counsel was called for the hearing, Counsel indicated he had a federal court hearing that was scheduled two days ago then hung up. Notably, counsel did not file any request or motion to continue this matter. Further, the verbal notification at the onset of the telephonic hearing is untimely.

1 not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
2 **DISMISSED.**

3 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
4 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
5 this Order.²

6 So ordered this 23rd day of March, 2021.

7
8 /s/
9 **JACQUELINE A. NICOLAS**
10 Administrative Hearing Officer

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28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:)
Caner Aksu,) Labor Case No. 20-035
Complainant,)
v.) ORDER OF DISMISSAL
Imperial Pacific International (CNMI), LLC,)
Respondent.)

This matter came for an Order to Show Cause Hearing on March 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Caner Aksu (“Complainant”) was not present and counsel Juan Lizama declined to participate in the hearing.¹ Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, the Order to Show Cause was issued on March 2, 2021 and served on March 3, 2021 pursuant to NMIAC § 80-20.1.475(d)(4), using contact information provided by the parties. During the hearing, Enforcement indicated that Complainant departed the CNMI in October and has not been in contact with the Department. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on above, the undersigned finds that the parties failed to show good cause as to why this case should

¹ When counsel was called for the hearing, Counsel indicated he had a federal court hearing that was scheduled two days ago then hung up. Notably, counsel did not file any request or motion to continue this matter. Further, the verbal notification at the onset of the telephonic hearing is untimely.

1 not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
2 **DISMISSED.**

3 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
4 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
5 this Order.²

6 So ordered this 23rd day of March, 2021.

7
8 /s/
9 **JACQUELINE A. NICOLAS**
10 Administrative Hearing Officer

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28 ² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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3	In Re Matter of:)	PUA Case No. 20-0036
4)	
5	Jan Michael Q. De Vero,)	
6)	
7	Appellant,)	ADMINISTRATIVE ORDER
8)	
9	v.)	
10)	
11	CNMI Department of Labor,)	
12	Division of Employment Services-PUA,)	
13)	
14	Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on March 08, 2021 at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Jan Michael Q. De Vero (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Dennis Cabrera, Labor Certification Worker. There were no other witnesses who gave testimony at the hearing.

Exhibits:

1. Exhibit 1: Appellant’s Appeal Form (dated November 12, 2020);
2. Exhibit 2: Department Determination (mail dated October 06, 2020);
3. Exhibit 3: Appellant’s Appeal Letter (received by DOL on October 12, 2020);
4. Exhibit 4: Appellant’s EAD Card;
5. Exhibit 5: USCIS Letter dated February 12, 2020;
6. Exhibit 6: Application Snapshot;
7. Exhibit 7: Employment Certification;
8. Exhibit 8: Copy of Appellant’s envelope with postage stamp;
9. Exhibit 9: Marianas Variety article dated October 15, 2020 and
10. Exhibit 10: Saipan Tribune article dated October 16, 2020.

1 For the reasons stated below, the Department's Determination dated October 06, 2020 is
2 **AFFIRMED**. Claimant is not eligible for benefits for the period of February 02, 2020 to
3 December 26, 2020.

4 II. JURISDICTION

5 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
6 2020 was signed into law creating new temporary federal programs for unemployment benefits
7 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
8 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
9 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
10 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
11 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
12 Administrative Hearing Office has been designated to preside over first level appeals of the
13 aforesaid programs.

15 III. PROCEDURAL HISTORY & ISSUE

16 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
17 review of Appellant's application and supporting documents, the Department issued a
18 disqualifying determination on October 06, 2020. The Department's determination found that
19 Appellant was not eligible to receive PUA effective February 02, 2020 to December 26, 2020
20 because Appellant was not a qualified alien. On November 12, 2020, Appellant filed a request to
21 appeal the disqualifying determination. On December 11, 2020, this matter was heard before the
22 undersigned *Pro Tem* Administrative Hearing Officer. On February 18, 2021, the undersigned
23 issued an order reopening the record so that additional evidence can be presented on the issue of
24 timeliness of the Appellant's appeal.

25
26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

IV. FINDINGS OF FACT

1 In consideration of the evidence provided and credibility of witness testimony, the
2 undersigned issues the following findings of fact:

- 3
- 4 1. Prior to the pandemic, Appellant was a Security Guard at the First Alarm Company
5 (“Employer”) located in Gualo Rai, Saipan. Appellant worked 35 hours per week and
6 earned \$7.39 per hour.⁴ Appellant was assigned to retailer I Love Saipan in Garapan.
 - 7 2. Appellant began working at Employer in April of 2019. Employer closed its office and
8 furloughed Appellant on March 30, 2020 due to the COVID-19 pandemic.
 - 9 3. Appellant applied for permanent residency prior to the COVID-19 pandemic. Appellant’s
10 application for permanent residency is still pending.
 - 11 4. Appellant possesses an Employment Authorization Card⁵ with the following credentials:
 - 12 a. USCIS #: 219-239-677;
 - 13 b. Category: C09;
 - 14 c. Card #: MSC1991269729; and
 - 15 d. Valid from September 4, 2019 to September 3, 2020.
 - 16 5. The Employment Authorization Document Card is a work permit that allows noncitizens
17 to work in the United States.
 - 18 6. On June 17, 2020, Appellant filed an application to claim PUA and FPUC benefits. In the
19 application, Appellant certified under penalty of perjury that his place of employment was
20 closed as a direct result of the COVID-19 public health emergency.⁶
 - 21 7. On October 06, 2020, the Department disqualified Appellant from receiving PUA benefits
22 effective February 02, 2020 to December 26, 2020.⁷ The Department denied Appellant’s
23 claim because he was not a qualified alien eligible to receive PUA benefits.
 - 24 8. On October 09, 2020, Appellant sent his appeal letter to the Office of the Secretary of
25 Labor via regular mail.⁸ The Department of Labor, Office of the Secretary, received
26 Appellant’s appeal letter on October 12, 2020.

27 ⁴ Exhibit 7.

⁵ Exhibit 4.

⁶ Exhibit 6.

⁷ Exhibit 2.

⁸ Exhibit 3.

1 9. On November 09, 2020, the Department of Labor Administrative Hearing Office advised
2 Appellant to submit the correct appeal form.

3 10. On November 12, 2020, Appellant filed the present appeal, claiming he was unable to
4 receive his green card on time because the USCIS had shut down due to the pandemic.⁹

5 **V. CONCLUSIONS OF LAW**

6 In consideration of the above-stated findings and applicable law, the undersigned issues the
7 following conclusions of law:

8 **1. Appellant did file a timely appeal.**

9 Generally, an appeal should be filed within ten days after the Notice of Determination was
10 issued or served to the claimant. However, the Department may extend the period to thirty
11 days, by a showing of good cause.¹⁰ Good cause means: (1) illness or disability; (2) keeping an
12 appointment for a job interview; (3) attending a funeral of a family member; and (4) any other
13 reason which would prevent a reasonable person from complying as directed.¹¹

14 Here, Appellant received the disqualifying determination on October 06, 2020. Appellant
15 mailed his letter of appeal to the Office of the Secretary of Labor on October 09, 2020. The Office
16 of the Secretary of Labor received the appeal letter on October 12, 2020. On November 09, 2020,
17 the Administrative Hearing Office advised Appellant to file the correct appeal form, which he
18 filed on November 12, 2020.

19 Although Appellant did not submit the correct form to the Administrative Hearing Office until
20 November 12, 2020, the undersigned finds that there is good cause to extend the appeal period to
21 thirty days. First, Appellant did submit his initial appeal letter, albeit incorrect form, to the
22 Department of Labor before the ten-day deadline. Second, Appellant did eventually file the
23 correct form after he was advised by the Administrative Hearing Office. Accordingly, Appellant's
24 appeal was timely filed.

25 **2. Appellant's employment was affected as a direct result of COVID-19.**

26
27
28 ⁹ Exhibit 1.

¹⁰ HI. Rev. Statute § 383-38(a).

¹¹ HAR § 12-5-81(j).

1 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a number
2 of requirements to meet the eligibility standard of PUA. First, the claimant cannot be qualified
3 for regular unemployment, extended benefits under state or federal law, or pandemic emergency
4 unemployment compensation (PEUC).¹² Second, the claimant must attest¹³ that he or she is able
5 and available for work, as defined by Hawaii law, except they are unemployed, partially
6 unemployed, or unable to work or unavailable for work as a direct result¹⁴ of a COVID-19 reason
7 identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 8 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
9 COVID-19 and is seeking a medical diagnosis;
- 10 (b) A member of the individual's household has been diagnosed with COVID-19;
- 11 (c) The individual is providing care for a family member or a member of the individual's
12 household who has been diagnosed with COVID-19;
- 13 (d) A child or other person in the household for which the individual has primary
14 caregiving responsibility is unable to attend school or another facility that is closed as
15 a direct result of the COVID-19 public health emergency and such school or facility
16 care is required for the individual to work;
- 17 (e) The individual is unable to reach the place of employment because of a quarantine
18 imposed as a direct result of the COVID-19 public health emergency;
- 19 (f) The individual is unable to reach the place of employment because the individual has
20 been advised by a health care provider to quarantine due to concerns related to
21 COVID-19;
- 22 (g) The individual was scheduled to commence employment and does not have a job or is
23 unable to reach the job as a direct result of the COVID-19 public health emergency;
- 24 (h) The individual has become the breadwinner or major support for a household because
25 the head of the household has died as a direct result of COVID-19;
- 26 (i) The individual has to quit his or her job as a direct result of COVID-19;
- 27 (j) The individual's place of employment is closed as a direct result of the COVID-19
28 public health emergency; or
- 29 (k) The individual meets any additional criteria established by the US
30 Secretary of Labor for unemployment assistance under PUA.

31 Additional criteria established by the US Secretary of Labor under item (k)¹⁵, above, includes:

- 32 (l) An individual who works as an independent contractor with reportable
33 income may also qualify for PUA benefits if he or she is unemployed,
34 partially employed, or unable or unavailable to work because the COVID-

35 _____
36 ¹² This is not at issue in this case. Appellant testified that she did not receive any other benefits from any other state
37 or federal program.

38 ¹³ The PUA program relies on self-certifications and self-reporting under penalty of perjury.

39 ¹⁴ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
40 is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
41 precipitated or exacerbated by the pandemic.

42 ¹⁵ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 19 public health emergency has severely limited his or her ability to
2 continue performing his or her customary work activities, and has thereby
3 forced the individual to suspend such activities;

- 4 (2) An individual who has been denied continued unemployment benefits
5 because the individual refused to return to work or accept an offer of
6 work at a worksite that, in either instance, is not in compliance with
7 local, state, or national health and safety standards directly related to
8 COVID-19. This includes, but is not limited to, those related to facial
9 mask wearing, physical distancing measures, or the provision of
10 personal protective equipment consistent with public health guidelines;
- 11 (3) An individual who provides services to an educational institution or
12 educational service agency and the individual is unemployed or partially
13 unemployed because of volatility in the work schedule that is directly
14 caused by the COVID-19 public health emergency. This includes, but is
15 not limited to, changes in schedules and partial closures; and
- 16 (4) An individual who is an employee and their hours have been reduced or
17 the individual was laid off as a direct result of the COVID-19 public
18 health emergency.

19 Based on the evidence and testimony provided, it is clear that Appellant's employment was
20 affected as a direct result of COVID-19. Due to COVID-19, there was an immediate halt in
21 tourism. The lack of tourism greatly impacted the revenue streams of businesses throughout the

22 CNMI, including First Alarm Company. For those reasons, the employer closed its office
23 starting March 30, 2020 and thereafter furloughed Appellant. Accordingly, Appellant's
24 employment was directly affected by the COVID-19 pandemic.

25 **3. Appellant is not a qualified alien eligible for PUA.**

26 PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of
27 eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time
28 relevant to the claim. 8 USC §1611(a). Pursuant to 8 USC §1641, the term "qualified alien" is:

1. An alien admitted for permanent residence under the Immigration and Nationality Act (INA);
2. An alien granted asylum under § 208 of the INA;
3. A refugee admitted to the US under § 207 of the INA;
4. An alien paroled into the US under § 212(d)(5) of the INA for at least one year;
5. An alien whose deportation is being withheld under § 243(h) of the INA ... or whose removal is being withheld under § 241 (b)(3) of the INA;
6. An alien granted conditional entry pursuant to § 203 (a)(7) of the INA;
7. An alien who is a Cuban or Haitian entrant as defined in § 501(e) of the Refugee Education Assistance Act of 1980; or

1 8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty
2 in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

3 Here, Appellant argues that he is a qualified alien because he applied for permanent residency
4 and that his application is pending because of delays associated with the pandemic.

5 Appellant's argument fails for the following reasons. First, the Employment Authorization
6 Document Card indicates that Appellant was authorized to work based on Category C09.
7 Category C09 is a code that USCIS utilizes for applicants pending an adjustment in status.
8 Category C09 does not fit into any type of qualified aliens entitled to benefits under the PUA
9 program. While Appellant may have submitted an application for permanent residence, the
10 application for permanent residency has not been approved. Further, considering that the
11 application is still pending, there is no showing that Appellant was a permanent resident during
12 the weeks claimed. Therefore, Appellant was not a qualified alien at the time of the weeks
13 claimed.

13 **4. An overpayment did not occur.**

14 "Benefits shall be paid promptly in accordance with a determination, redetermination, or
15 decision or appeal."¹⁶ However, "[a]ny individual who has received any amount as benefits . . .
16 to which the individual was not entitled shall be liable for the amount unless the overpayment was
17 received without fault on the part of the recipient and its recovery would be against equity and
18 good conscience."¹⁷ Here, Appellant did not receive PUA benefits. Therefore, an overpayment
19 did not occur.

20 **VI. CONCLUSION**

21 For the reasons stated above, it is ORDERED that:

- 22 1. The CNMI Department of Labor's Determination is **AFFIRMED**;
23 2. The Appellant is **INELIGIBLE** to receive PUA benefits for the weeks of February 02,
24 2020 to December 26, 2020.

25 If a party is aggrieved by this Order and would like to contest the decision, he or she must
26 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
27

28 ¹⁶ HRS § 383-43.

¹⁷ HRS § 383-44.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re the Matter of:)	Labor Case No. 20-036
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Volken Koymen,)	
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Complainant,)	ORDER OF DISMISSAL
)	
v.)	
)	
Imperial Pacific International (CNMI), LLC,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on March 23, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Volken Koymen (“Complainant”) was not present and counsel Juan Lizama declined to participate in the hearing.¹ Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

Here, the parties were given sufficient notice and opportunity to respond as to why this case should not be dismissed. Specifically, the Order to Show Cause was issued on March 2, 2021 and served on March 3, 2021 pursuant to NMIAC § 80-20.1.475(d)(4), using contact information provided by the parties. During the hearing, Enforcement indicated that Complainant departed the CNMI in October and has not been in contact with the Department. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on above, the undersigned finds that the parties failed to show good cause as to why this case should

¹ When counsel was called for the hearing, Counsel indicated he had a federal court hearing that was scheduled two days ago then hung up. Notably, counsel did not file any request or motion to continue this matter. Further, the verbal notification at the onset of the telephonic hearing is untimely.

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not be dismissed. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby
DISMISSED.

Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.²

So ordered this 23rd day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

² The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

1)	
2)	
3)	
4	In Re the Matter of:	)	Labor Case No. 20-038
5	Yee Sing Yuen,)	
6)	
7	Complainant,	)	ORDER OF DISMISSAL
8)	
9	v.)	
10)	
11	Imperial Pacific International (CNMI), LLC,)	
12)	
13	Respondent.)	

This matter came for a Prehearing Conference on March 25, 2021 at 10:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Yee Sing Yuen (“Complainant”) departed the CNMI and was not present for the hearing. Respondent Imperial Pacific International (CNMI), LLC (“Respondent”) failed to designate a representative to participate in the hearing and was not present. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

Here, notice and service of process was sufficient. Specifically, the Notice of Prehearing Conference was issued and served on February 26, 2021, pursuant to NMIAC § 80-20.1.475(d)(4), using contact information provided by the parties. During the Prehearing Conference, Enforcement indicated that Complainant departed the CNMI and has not been in contact with the Department since December 4, 2020. Enforcement further indicated that requests for documents and notices to Respondent were properly served but remain unanswered. Specifically, Respondent designates an email address for electronic service of process but does not have anyone authorized to appear for investigations and hearings. Based on above, and the parties’ non-appearance at the prehearing conference, the undersigned finds dismissal is warranted. Accordingly, pursuant to NMIAC § 80-20.1-485(b), this matter is hereby **DISMISSED.**

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Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.¹

So ordered this 25th day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re the Matter of:)	Labor Case No. 20-044
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Benjamin T. Viana,)	
)	
Complainant,)	ORDER OF DISMISSAL
)	
v.)	
)	
Anaks Ocean View Hill Saipan Homeowner's Association, Ltd.,)	
)	
Respondent.)	

This matter came for a Prehearing Conference on March 25, 2021 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Benjamin T. Viana (“Complainant”) was present and self-represented.¹ Respondent Anaks Ocean View Hill Saipan Homeowner’s Association, Ltd. (“Respondent”) was present and represented by General Manager Kentaro Imaya and employee Loly Sanchez. The Department’s Enforcement, Compliance, and Monitoring Section (“Enforcement”) was also present and represented by Acting Director Jeffrey Camacho.

During the Prehearing Conference, the undersigned provided the parties an opportunity to clarify their claims and requests for relief. Additionally, the undersigned heard from Enforcement with respect to their written determination and recommendation for dismissal. Here, Complainant is filing a case for wrongful suspension arising from a dispute with Ms. Sanchez. Contrary to the written complaint filed on November 13, 2020, Complaint clarified and confirmed on the record that he is not pursuing a claim for unpaid wages. Additionally, Complainant clarified he is requesting, among other things, a transfer of employers and wages from his renewed CW-1 petition.

¹ Mr. Felipe Q. Atalig appeared with Complainant as an observer.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re the Matter of:)
Labor Case No. 21-020)
Kowsar Halim,)
Complainant,)
ORDER OF DISMISSAL)
v.)
JN Saipan CNMI, LLC,)
Respondent.)

This matter came for an Order to Show Cause Hearing on April 6, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Kowsar Halim (“Complainant”) was present and self-represented. Respondent JN Saipan CNMI, LLC (“Respondent”) was present and represented by President MD Jashim Uddin. The hearing was facilitated by Interpreter Manzurul Alam.

As a preliminary matter, this office does not have jurisdiction with respect to labor violations involving illegal employment relationships. *See* 3 CMC § 4942; *see also* NMIAC § 80-20.1-450(b)(1)-(3); *see also* 43 Com. Reg. 045473 (Mar. 28, 2021). Further, pursuant to 3 CMC § 4962, “[n]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 to be without merit.” 3 CMC § 4947.

On January 25, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around December 2017 to September 2018 and October 2020 to December 2020. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint partially fall outside the six-month statute of limitations and

1 occurred during a time when Complainant was not legally authorized to work in the CNMI.
2 Specifically, Complainant has made no showing of his authorization to work and Respondent
3 admitted that he employed Complainant illegally. For these reasons, the undersigned finds
4 dismissal for failure to state a claim and lack of jurisdiction is proper. Accordingly, based on the
5 applicable law and evidence provided, this complaint is hereby **DISMISSED**, with prejudice.

6 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
7 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
8 this Order.¹

9 So ordered this **6th** day of April, 2021.

10 */s/*

JACQUELINE A. NICOLAS
Administrative Hearing Officer

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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

1)	
2)	
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4	In Re the Matter of:)	Labor Case No. 21-021
5	Abul Kalam Azad,)	
6)	
7	Complainant,)	ORDER OF DISMISSAL
8)	
9	v.)	
10	JN Saipan CNMI, LLC,)	
11)	
12	Respondent.)	

This matter came for an Order to Show Cause Hearing on April 6, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Abul Kalam Azad (“Complainant”) was present and self-represented. Respondent JN Saipan CNMI, LLC (“Respondent”) was present and represented by President MD Jashim Uddin. The hearing was facilitated by Interpreter Manzurul Alam.

Pursuant to 3 CMC § 4962, “[n]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 to be without merit.” 3 CMC § 4947.

On January 25, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around December 2017 to September 2018. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

///

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 6th day of April, 2021.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Administrative Hearing Officer

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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 6th day of April, 2021.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Administrative Hearing Officer

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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

1)	
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4	In Re the Matter of:)	Labor Case No. 21-023
5	Habibur Rahman,)	
6	Complainant,)	ORDER OF DISMISSAL
7	v.)	
8	JN Saipan CNMI, LLC,)	
9	Respondent.)	
10)	
11)	

12 This matter came for an Order to Show Cause Hearing on April 6, 2021 at 9:00 a.m. at the
13 Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the
14 hearing was held telephonically. Complainant Habibur Rahman (“Complainant”) was present and
15 self-represented. Respondent JN Saipan CNMI, LLC (“Respondent”) was present and represented
16 by President MD Jashim Uddin. The hearing was facilitated by Interpreter Manzurul Alam.

17 Pursuant to 3 CMC § 4962, “[n]o labor complaint may be filed more than six months after
18 the date of the last-occurring event that is the subject of the complaint, except in cases where the
19 actionable conduct was not discoverable upon the last-occurring event.” “If a complaint is not
20 timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-
21 465(e). Emphasis added. “The hearing officer may, after notice and an opportunity to be heard is
22 provided to the parties, dismiss *sua sponte* a complaint that the hearing officer finds to be without
23 merit.” 3 CMC § 4947.

24 On January 25, 2021, Complainant filed the above-captioned labor case alleging unpaid
25 wages and unlawful deductions arising on or around May 2018 to October 2018. After notice and
26 opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside
27 the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-
28 20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

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¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 6th day of April, 2021.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Administrative Hearing Officer

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Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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In Re the Matter of:)	Labor Case No. 21-024
)	
Mohammad Arman,)	
)	
Complainant,)	ORDER OF DISMISSAL
)	
v.)	
)	
JN Saipan CNMI, LLC,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on April 6, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Mohammad Arman (“Complainant”) was present and self-represented. Respondent JN Saipan CNMI, LLC (“Respondent”) was present and represented by President MD Jashim Uddin. The hearing was facilitated by Interpreter Manzurul Alam.

Pursuant to 3 CMC § 4962, “[n]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 to be without merit.” 3 CMC § 4947.

On January 25, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around March 2017 to June 2018. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

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Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.¹

So ordered this 6th day of April, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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<p>In Re the Matter of:</p> <p>Mohammad Johirul Islam,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>JN Saipan CNMI, LLC,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 21-025</p> <p>ORDER OF DISMISSAL</p>
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This matter came for an Order to Show Cause Hearing on April 6, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Mohammad Johirul Islam (“Complainant”) was present and self-represented. Respondent JN Saipan CNMI, LLC (“Respondent”) was present and represented by President MD Jashim Uddin. The hearing was facilitated by Interpreter Manzurul Alam.

Pursuant to 3 CMC § 4962, “[n]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 to be without merit.” 3 CMC § 4947.

On February 4, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around February 2017 to April 2017. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

///

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 6th day of April, 2021.

5 /s/
6 JACQUELINE A. NICOLAS
7 Administrative Hearing Officer

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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:)
MD Ashiquzzaman,) Labor Case No. 21-026
Complainant,)
v.) ORDER OF DISMISSAL
MIR Corporation,)
Respondent.)

This matter came for an Order to Show Cause Hearing on April 6, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant MD Ashiquzzaman (“Complainant”) was present and self-represented. Respondent MIR Corporation (“Respondent”) was present and represented by President and Director Mir Mahabobur Rahman Panna. The hearing was facilitated by Interpreter Manzurul Alam.

Pursuant to 3 CMC § 4962, “[1]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 of icer finds to be without merit.” 3 CMC § 4947.

On February 5, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around August 2016 to December 2018. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

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1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 6th day of April, 2021.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Administrative Hearing Officer

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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the
Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 6th day of April, 2021.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Administrative Hearing Officer

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Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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<p>In Re the Matter of:</p> <p>Mohammad Anwar Hosain Rana,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>AMG Corporation,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 21-028</p> <p>ORDER OF DISMISSAL</p>
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This matter came for an Order to Show Cause Hearing on April 5, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Mohammad Anwar Hosain Rana (“Complainant”) was present and self-represented. Respondent AMG Corporation (“Respondent”) was present and represented by President Moinrej Bhuiyan and Attorney Joseph E. Horey. The hearing was facilitated by Interpreter Manzurul Alam.

Pursuant to 3 CMC § 4962, “[n]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 to be without merit.” 3 CMC § 4947.

On February 8, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around February to June 2019. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

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1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 5th day of April, 2021.

5
6 /s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

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28 ¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

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In Re the Matter of:)	Labor Case No. 21-029
Md. Soheal Akanda,)	
)	
Complainant,)	ORDER OF DISMISSAL
)	
v.)	
)	
AMG Corporation,)	
)	
Respondent.)	

This matter came for an Order to Show Cause Hearing on April 5, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Md. Soheal Akanda (“Complainant”) was present and self-represented. Respondent AMG Corporation (“Respondent”) was present and represented by President Momrej Bhuiyan and Attorney Joseph E. Horey. The hearing was facilitated by Interpreter Manzurul Alan.

Pursuant to 3 CMC § 4962, “[n]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 to be without merit.” 3 CMC § 4947.

On February 8, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around June 2016 to March 2017. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

///

1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 5th day of April, 2021.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Administrative Hearing Officer

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Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of this Order.¹

So ordered this 5th day of April, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

¹ The Notice of Appeal Form is available online at www.marianaslabor.net or hard copies are available at the Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative Hearing Office, with the applicable filing fee.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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<p>In Re the Matter of:</p> <p>Mohammad Mahabubur Rahman,</p> <p style="padding-left: 100px;">Complainant,</p> <p style="padding-left: 100px;">v.</p> <p>AMG Corporation,</p> <p style="padding-left: 100px;">Respondent.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>Labor Case No. 21-031</p> <p>ORDER OF DISMISSAL</p>
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This matter came for an Order to Show Cause Hearing on April 5, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Complainant Mohammad Mahabubur Rahman (“Complainant”) was present and self-represented. Respondent AMG Corporation (“Respondent”) was present and represented by President Momrej Bhuiyan and Attorney Joseph E. Horey. The hearing was facilitated by Interpreter Manzurul Alam.

Pursuant to 3 CMC § 4962, “[n]o labor 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.” “If a complaint is not timely filed, the hearing office *shall* dismiss the complaint with prejudice.” NMIAC § 80-20.1-465(e). Emphasis added. “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 to be without merit.” 3 CMC § 4947.

On February 8, 2021, Complainant filed the above-captioned labor case alleging unpaid wages and unlawful deductions arising on or around June 2016 to March 2017. After notice and opportunity to be heard, the undersigned finds that the allegations in this complaint fall outside the six-month statute of limitations. Accordingly, pursuant to 3 CMC § 4962 and NMIAC § 80-20.1-465(e), this complaint is hereby **DISMISSED**, with prejudice.

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1 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal form
2 and filing fee with the Administrative Hearing Office within fifteen (15) days from the date of
3 this Order.¹

4 So ordered this 5th day of April, 2021.

5 /s/
6 **JACQUELINE A. NICOLAS**
7 Administrative Hearing Officer
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Administrative Hearing Office. The aggrieved person or party must file the completed form at the Administrative
Hearing Office, with the applicable filing fee.



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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In Re Matter of:)	PUA Case No. 21-0052
)	
Erwin T. Flores,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 23, 2021 at 1:30 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Erwin T. Flores. (“Appellant”) was not present and was not represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Labor Certification Worker Dennis Cabrera, PUA Coordinator, Anna Mae Adaza, and PUA Coordinator, Britney Takai. There were no other witnesses who provided testimony at the hearing. The following exhibits have been admitted onto the record:

- Exhibit 1: Disqualifying Determination dated January 26, 2021;
- Exhibit 2: Disqualifying Determination dated January 27, 2021;
- Exhibit 3: Furlough Notice;
- Exhibit 4: Separation Notice;
- Exhibit 5: Certification of Employment;
- Exhibit 6: Application Snapshot;
- Exhibit 7: Recall Letter dated July 14, 2020;
- Exhibit 8: Applications for Leave:
 - a. July 20, 2020 to July 31, 2020;
 - b. August 3, 2020 to August 7, 2020;

1 c. August 10, 2020 to August 14, 2020;

2 Exhibit 9: Termination Letter dated October 23, 2020;

3 Exhibit 10: Notice of Overpayment dated February 19, 2021;

4 Exhibit 11: Copy of Driver's License;

5 Exhibit 12: DPL Recall List;

6 Exhibit 13: Appellant's Appeal Form.

7 For the reasons stated below, the Department's Determinations dated January 26, 2021 and
8 January 27, 2021 are **AFFIRMED**. Claimant is not eligible for benefits for the periods of July
9 19, 2020 to August 15, 2020 and October 25, 2020 to December 26, 2020.

10 II. JURISDICTION

11 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
12 2020 was signed into law creating new temporary federal programs for unemployment benefits
13 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
14 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
15 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
16 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
17 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
18 Administrative Hearing Office has been designated to preside over first level appeals under PUA.

19 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
20 established.

21 III. PROCEDURAL HISTORY & ISSUE

22 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
23 review of Appellant's application and supporting documents, the Department issued its initial
24 determination on January 26, 2021. The Department's determination found the Appellant was
25 ineligible to receive benefits from July 19, 2020 to August 15, 2020. The Department issued a

26 ///

27 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii Employment Security Law applies, to the extent it does not conflict with federal law.

1 second determination on January 27, 2021. The Department found the Appellant was ineligible
2 to receive benefits from October 25, 2020 to December 26, 2020.

3 Appellant filed the present appeal on January 27, 2021. The issues on appeal are 1) whether
4 Appellant is eligible for Pandemic Unemployment Assistance and 2) whether there are any
5 overpayments necessitating the return of PUA funds in this case.

6 **IV. FINDINGS OF FACT**

7 In consideration of the evidence provided and credibility of witness testimony, the
8 undersigned issues the following findings of fact:

- 9 1. Prior to the pandemic, Appellant, a U.S. citizen, was employed as a Compliance
10 Technician II at the Department of Public Lands (“DPL”). Appellant regularly worked 40
11 hours per week at an hourly rate of \$9.71. Appellant began working at DPL on July 30,
12 2018.⁴
- 13 2. On April 23, 2020, Appellant was furloughed from his employ at DPL due to the economic
14 impact of the COVID-19 pandemic.⁵
- 15 3. On June 25, 2020, Appellant filed an application to claim PUA and FPUC benefits.⁶
- 16 4. On July 14, 2020, DPL Secretary Marianne Concepcion-Teregeyo (“Secretary Teregeyo”)
17 recalled Appellant from furlough status, effective July 20, 2020.⁷
- 18 5. Appellant took leave without pay for the following periods: July 20, 2020 to July 31, 2020;
19 August 03, 2020 to August 07, 2020; and August 10, 2020 to August 14, 2020.⁸
- 20 6. On October 23, 2020, Secretary Teregeyo terminated Appellant, effective October 26,
21 2020.⁹
- 22 7. On January 26, 2021, the Department disqualified Appellant from receiving PUA benefits
23 effective July 19, 2020 to August 15, 2020. The Department denied Appellant’s claim
24 because Appellant was not able and available to work since he took leave without pay
25 after being recalled to work.¹⁰

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26 ⁴ Exhibit 5.
27 ⁵ Exhibit 3.
28 ⁶ Exhibit 6.
⁷ Exhibit 7.
⁸ Exhibit 8.
⁹ Exhibit 9.
¹⁰ Exhibit 1.

1 8. On January 27, 2021, the Department further disqualified Appellant from receiving PUA
2 benefits effective October 25, 2020 to December 26, 2020 because Appellant was
3 terminated from his employment at DPL due to reasons unrelated to the COVID-19
4 pandemic.¹¹

5 9. On January 27, 2021, Appellant filed the present appeal, claiming that he had yet to
6 receive any determination from the Department's November 17, 2020 review of his PUA
7 file.¹²

8 10. On February 19, 2021, the Department issued a Notice of Overpayment. The Department
9 determined that Appellant was overpaid a total of \$5,500.00 for the weeks of July 25,
10 2020 through October 17, 2020 and the weeks October 31, 2020 to November 14, 2020.
11 Appellant received \$540.00 in FPUC benefits and \$4,960.00 in PUA benefits.¹³

12 V. CONCLUSIONS OF LAW

13 In consideration of the above-stated findings and applicable law, the undersigned issues the
14 following conclusions of law:

15 1. Appellant's employment was not affected as a direct result of COVID-19.

16 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a
17 number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be
18 qualified for regular unemployment, extended benefits under state or federal law, or pandemic
19 emergency unemployment compensation (PEUC).¹⁴ Second, the claimant must show that he or
20 she is able and available for work, as defined by Hawaii law, except they are unemployed,
21 partially unemployed, or unable to work or unable for work due to at least one of the following
22 COVID-19 reasons identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 23 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
24 COVID-19 and is seeking a medical diagnosis;
- 25 (b) A member of the individual's household has been diagnosed with COVID-19;
- 26 (c) The individual is providing care for a family member or a member of the individual's
27 household who has been diagnosed with COVID-19;
- 28 (d) A child or other person in the household for which the individual has primary
caregiving responsibility is unable to attend school or another facility that is closed as

¹¹ Exhibit 2.

¹² Exhibit 13.

¹³ Exhibit 10.

¹⁴ This was not an issue in this matter.

1 a direct result of the COVID-19 public health emergency and such school or facility
2 care is required for the individual to work;

- 3 (e) The individual is unable to reach the place of employment because of a quarantine
4 imposed as a direct result of the COVID-19 public health emergency;
- 5 (f) The individual is unable to reach the place of employment because the individual has
6 been advised by a health care provider to quarantine due to concerns related to
7 COVID-19;
- 8 (g) The individual was scheduled to commence employment and does not have a job or is
9 unable to reach the job as a direct result of the COVID-19 public health emergency;
- 10 (h) The individual has become the breadwinner or major support for a household because
11 the head of the household has died as a direct result of COVID-19;
- 12 (i) The individual has to quit his or her job as a direct result of COVID-19;
- 13 (j) The individual's place of employment is closed as a direct result of the COVID-19
14 public health emergency; or
- 15 (k) The individual meets any additional criteria established by the US
16 Secretary of Labor for unemployment assistance under PUA.

17 Additional criteria established by the US Secretary of Labor under item (k)¹⁵, above, includes:

- 18 (1) The individual is an independent contractor who is unemployed
19 (total or partial) or is unable or unavailable to work because of the
20 COVID-19 public health emergency has severely limited his or
21 her ability to continue performing the customary job;
- 22 (2) The individual has been denied continued unemployment benefits
23 because the individual refused to return to work or accept an offer
24 of work at a worksite that, in either instance, is not in compliance
25 with local, state, or national health and safety standards directly
26 related to COVID-19. This includes, but is not limited to, those
27 related to facial mask wearing, physical distancing measures, or
28 the provision of personal protective equipment consistent with
public health guidelines;
- (3) An individual provides services to an educational institution or
educational service agency and the individual is unemployed or
partially unemployed because of volatility in the work schedule
that is directly caused by the COVID-19 public health emergency.
This includes, but is not limited to, changes in schedules and
partial closures; and
- (4) An individual is an employee and their hours have been reduced
or the individual was laid off as a direct result of the COVID-19
public health emergency.

¹⁵ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

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2 Because Appellant was furloughed by DPL on April 23, 2020, due to the economic impact of
3 COVID-19, Appellant's employment was initially affected by the pandemic. However,
4 Appellant's employment stopped being affected by the COVID-19 pandemic when he was
5 recalled to work on July 20, 2020. Moreover, since Appellant immediately took leave without
6 pay from July 20, 2020 to August 14, 2020 for reasons unrelated to the pandemic, his employment
7 during that period was not affected by the pandemic. Finally, since DPL subsequently terminated
8 Appellant on October 26, 2020, for reasons unrelated to COVID-19, his unemployment from
9 October 26, 2020 to December 26, 2020 was not the result of COVID-19. Therefore, Appellant's
10 employment in this case was not directly affected by COVID-19 from July 20, 2020 to August
11 14, 2020 and from October 26, 2020 to December 26, 2020.

11 **2. Appellant was not able and available to work.**

12 A claimant must be able to work and be available for work to be eligible for benefits. "An
13 individual shall be deemed able and available for work...if the individual is able and available for
14 suitable work during the customary work week of the individual's customary occupation which
15 falls *within the week for which a claim is filed*."¹⁶ "An individual shall be deemed *able* to work
16 if the individual has the physical and mental ability to perform the usual duties of the individual's
17 customary occupation or other work for which is the individual is reasonably fitted by training
18 and experience."¹⁷ "An individual shall be deemed *available* for work only if the individual is
19 ready and willing to accept employment for which the individual is reasonably fitted by training
20 and experience. The individual must intend and wish to work, and there must be no undue
21 restrictions either self-imposed or created by force of circumstances which prevent the individual
22 from accepting employment."¹⁸

23 Although Appellant was recalled to work on July 20, 2020, he immediately took leave without
24 pay from July 20, 2020 to August 14, 2020. Appellant's reason for taking leave without pay was
25 not related to COVID-19, but was for personal reasons. Accordingly, the undersigned finds that
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28 ¹⁶ HAR § 12-5-35(a) (emphasis added).

¹⁷ HAR § 12-5-35(a)(1) (emphasis added).

¹⁸ HAR § 12-5-35(a)(2) and (b) (emphasis added).

1 Appellant was not “able and available” to work, as defined by law, from July 20, 2020 to August
2 14, 2020.

3 **3. An overpayment occurred and Appellant is required to pay the amount back.**

4 “Benefits shall be paid promptly in accordance with a determination, redetermination, or
5 decision or appeal.”¹⁹ However, “[a]ny individual who has received any amount as benefits . . .
6 to which the individual was not entitled shall be liable for the amount unless the overpayment was
7 received without fault on the part of the recipient and its recovery would be against equity and
8 good conscience.”²⁰ Notably, PUA and FPUC overpayments are treated differently. The CNMI
9 has no authority to waive repayment of PUA overpayments. In cases of FPUC overpayments, the
10 CNMI may waive repayment if the payment was made without fault on the part of the individual
and such repayment would be contrary to equity and good conscience.²¹ Fault²² is defined as:

- 11 (A) A material statement made by the individual which the
12 individual knew or should have known to be incorrect; or
13 (B) Failure to furnish information which the individual knew or
14 should have known to be material; or
15 (C) Acceptance of a payment which the individual either knew or
reasonably could have been expected to know was incorrect.

16 Based on federal guidance, “contrary to equity and good conscience” is tantamount to
17 placing an individual below the poverty line and taking away basic necessities to live. In
18 evaluating equity and good conscience,²³ the factors to consider include, but are not limited to:

- 19 (A) Whether notice of a redetermination was given to the claimant,
as required . . .
20 (B) Hardship to the claimant that the repayment may impose; and
21 (C) The effect, if any, that the repayment will have upon the
fulfillment of the objectives of the program.²⁴

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25 ¹⁹ HRS § 383-43.

26 ²⁰ HRS § 383-44.

²¹ Section 2104(f)(2) of the CARES Act of 2020, Public Law 116-136; *See* UIPL 16-20.

²² HRS 12-5-83.

²³ *Id.*

27 ²⁴ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
28 pandemic. PUA is not an excuse to refuse suitable work. PUA is not free or unencumbered money. Issues of fraud
and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for
eligible or qualified individuals.

1 Considering that Appellant's employment was not directly affected by the COVID-19
2 pandemic for the weeks of October 26, 2020 to December 26, 2020 and Appellant was not able
3 and available to from July 20, 2020 to August 14, 2020, the \$4,960.00 in PUA benefits and
4 \$540.00 in FPUC benefits received by Appellant is an overpayment. The undersigned finds that
5 the overpayment was Appellant's fault. Based on testimony presented at the hearing, the
6 undersigned finds that Appellant accepted payment knowing that such payment was incorrect.

7 Furthermore, the undersigned finds that repayment by Appellant would not be contrary to
8 equity and good conscience. Because Appellant failed to appear at the hearing, the undersigned
9 did not receive testimony or evidence from Appellant to establish that repayment would impose
10 a hardship for Appellant. Accordingly, Appellant is not entitled to a waiver and requiring
11 Appellant to return the overpayment is not contrary to equity and good conscience.

12 VI. ORDER

13 For the reasons stated above, it is ORDERED that:

- 14 1. The CNMI Department of Labor's Determinations are **AFFIRMED**;
- 15 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the periods of July 19,
16 2020 to August 15, 2020 and October 25, 2020 to December 26, 2020.
- 17 3. Appellant shall promptly submit to a repayment plan with the Benefit Payment Control
18 Unit. Appellant shall pay monthly installments of at least, \$100.00 by the first of each
19 month, beginning May 01, 2021, until the entire overpayment is completely paid;
- 20 4. The CNMI Department of Labor Benefit Payment Control Unit shall notify the CNMI
21 Department of Finance of this overpayment in federal funds. Where possible, BPC shall
22 collect any of Appellant's tax rebates, tax refunds, stimulus checks, or other federal funds
23 to satisfy this debt.

24 If a party is aggrieved by this Order and would like to contest the decision, he or she must
25 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
26 written request should be supported by legal, factual, or evidentiary reasons to reopen the
27 decision. The written request must be submitted to the Administrative Hearing Office, either in
28 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
hearing@dol.gov.mp.

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In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 8th day of April, 2021.

/s/
JOEY P. SAN NICOLAS
Pro Tem Administrative
Hearing Officer

- 1 10. Exhibit 10: Copy of Appellant's Passport;
- 2 11. Exhibit 11: Copy of Appellant's Social Security Card; and
- 3 12. Exhibit 12: Department's SAVE Verification (initiated September 11, 2020).

4 For the reasons stated below, the Department's Determination dated October 27, 2020 is
5 **AFFIRMED**. Claimant is not eligible for benefits for the period of February 16, 2020 to
6 December 26, 2020.

7 II. JURISDICTION

8 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
9 2020 was signed into law creating new temporary federal programs for unemployment benefits
10 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
11 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
12 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
13 applicable law.³ On December 27, 2020, the Continued Assistance for Unemployed Workers Act
14 of 2020 ("Continued Assistance Act") amended and created new provisions of said federal
15 unemployment insurance programs, which, among other things, extended the PUA and FPUC
16 programs to March 13, 2021.⁴ On March 11, 2021, the American Rescue Plan Act of 2021
17 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is
18 charged with the responsibility in administering the above-mentioned programs in the CNMI. The
19 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
20 first level appeals of the aforesaid programs.

21 Upon review of the records, the appeal was not timely filed. Accordingly, jurisdiction is not
22 established.

23 III. PROCEDURAL HISTORY & ISSUE

24
25 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

26 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

27 ³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI
28 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and
guidance.

⁴ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for
Unemployed Workers Act of 2020" or "Continued Assistance Act").

1 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
2 review of Appellant's application and supporting documents, the Department issued a
3 disqualifying determination with a mail date of October 27, 2020. The Department's
4 determination found that Appellant was not eligible to receive PUA effective February 16, 2020
5 to December 26, 2020 because the Department found that Appellant was not a qualified alien. On
6 February 01, 2021, Appellant filed a request to appeal the disqualifying determination. As stated
7 in Notice of Hearing, the issues on appeal are: (1) whether the Appeal is timely filed; (2) whether
8 Appellant is a qualified alien eligible for PUA and (3) whether there are any overpayments
9 necessitating the return of PUA funds in this case.

10 IV. FINDINGS OF FACT

11 In consideration of the evidence provided and credibility of witness testimony, the
12 undersigned issues the following findings of fact:

- 13 1. Prior to the pandemic, Appellant was employed as a Housekeeping Attendant at World
14 Resort ("Employer"), located in Susupe, Saipan. Appellant worked for Employer from
15 July 22, 2017 to present. Prior to COVID-19, Appellant generally worked 40 hours per
16 week for the hourly rate of \$7.30.⁵
- 17 2. On August 18, 2020, Appellant filed an application to claim PUA and FPUC benefits.⁶ In
18 the application, Appellant certified under penalty of perjury that her employment was
19 affected as a direct result of COVID-19 since February 22, 2020, when her hours were
20 reduced and her place of employment closed.
- 21 3. Due to the reduction in tourism during the pandemic, Employer had to reduce operations
22 and eventually closed to the public.
 - 23 a. Effective February 22, 2020, Appellant's hours were reduced to 25 hours a week.
 - 24 b. Ultimately, on September 5, 2020, Appellant was placed on a temporary furlough
25 until March 31, 2021.⁷
- 26 4. Appellant has not found other work or otherwise recalled back into the workforce.
- 27 5. On October 27, 2020, the Department disqualified Appellant from receiving PUA benefits
28 effective February 16, 2020 to December 26, 2020.⁸ The Determination found that the

27 ⁵ Exhibit 1.

28 ⁶ Exhibit 1.

⁷ Exhibit 6.

⁸ Exhibit 3.

1 Appellant was not a U.S. Citizen, Non-citizen National, or Qualified Alien eligible for
2 PUA.

3 6. On February 01, 2021, Appellant untimely filed the present Appeal claiming to be a
4 qualified alien.⁹ Appellant filed her appeal because she believed that she is a qualified
5 alien under the second phase of PUA.

6 7. Appellant has a CBP Form I-94 card and notice of parole showing she was paroled into
7 the U.S. from October 29, 2019 to June 29, 2020.

8 8. Applicant's Parolee Status expired and was not extended beyond June 29, 2020.

9 9. Appellant was given prior employment authorizations with the Category C11. Appellant
10 has Employment Authorization Document ("EAD")¹⁰ cards valid for the following
11 periods:¹¹

12 a. March 19, 2014 to December 31, 2014;

13 b. March 06, 2015 to March 05, 2016;

14 c. April 18, 2016 to December 31, 2016; and

15 d. June 23, 2017 to December 31, 2018.

16 10. On or around September 11, 2020, the Department conducted a SAVE verification and
17 found that Appellant has a pending I-765 Application with USCIS and was not authorized
18 to work after her C11 EAD expired in December 31, 2018.¹²

19 11. Appellant is not a permanent resident, alien granted asylum, refugee, an alien pending
20 deportation or removal, an alien granted conditional entry, a Cuban or Haitian entrant, or
21 an alien battered or subject to extreme cruelty.

22 V. CONCLUSIONS OF LAW

23 In consideration of the above-stated findings and applicable law, the undersigned issues the
24 following conclusions of law:

25 1. This appeal is not timely filed.

26 Generally, an appeal should be filed within ten days after the Notice of Determination was
27 issued or served to the claimant. However, the Department may extend the period to thirty days

28 ⁹ Exhibit 4.

¹⁰ An EAD is a work permit that allows noncitizens to work in the United States.

¹¹ Exhibit 6.

¹² Exhibit 13.

1 by a showing of good cause.¹³ Good cause means: (1) illness or disability; (2) keeping an
2 appointment for a job interview; (3) attending a funeral of a family member; and (4) any other
3 reason which would prevent a reasonable person from complying as directed.¹⁴

4 Here, Appellant received the disqualifying determination on October 27, 2020. The Appellant
5 did not file her Appeal until February 01, 2021 – approximately 95 days after receiving the
6 determination. When asked why Appellant filed her appeal in February, rather than in October
7 or November, Appellant stated that she filed in February because under phase II of the CARES
8 Act, she was a qualified alien eligible to receive Pandemic Unemployment Assistance.

9 Based on Appellant’s testimony, the undersigned finds that Appellant did not have good cause
10 to file late. Appellant’s reason for her late filing does not amount to “good cause”.

11 For failure to show good cause, Appellant’s filing deadline remains at 10 days. Based on the
12 applicable timeline, Appellant’s filing is untimely. Further, because Appellant’s appeal is
13 untimely, the Department’s Determination is final and remaining issues are moot.

14 VI. CONCLUSION

15 For the reasons stated above, it is ORDERED that:

- 16 1. The CNMI Department of Labor’s Determination is **AFFIRMED**;
- 17 2. The Appellant is **INELIGIBLE** to receive PUA benefits for the weeks of February 16,
18 2020 to December 26, 2020.

19 If a party is aggrieved by this Order and would like to contest the decision, he or she must
20 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
21 written request should be supported by legal, factual, or evidentiary reasons to reopen the
22 decision. The written request must be submitted to the Administrative Hearing Office, either in
23 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
24 hearing@dol.gov.mp.

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28 ¹³ HI. Rev. Statute § 383-38(a).

¹⁴ HAR § 12-5-81(j).

1 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
2 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
3 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
4 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
5 filings fees, and filing deadlines for judicial review will be as established by the applicable law
6 and court rule.

7 So ordered this 19th day of April, 2021.

8 /s/

9 **JOEY P. SAN NICOLAS**
10 *Pro Tem* Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0054
)
Francis Jude R. Villagomez,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on February 22, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Francis Jude R. Villagomez (“Appellant”) was present and was not represented by counsel. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Labor Certification Worker Dennis Cabrera, PUA Coordinator Mario Kaipat and PUA Supervisor Sharon Palacios. There were no other witnesses who provided testimony at the hearing. The following exhibits have been admitted onto the record:

- Exhibit 1: Disqualifying Determination dated February 01, 2021;
- Exhibit 2: Appellant’s Appeal Form dated February 04, 2021;
- Exhibit 3: Physician’s Disability Certification;
- Exhibit 4: Copy of Appellant’s Birth Certificate;
- Exhibit 5: Copy of Appellant’s Driver’s License;
- Exhibit 6: Copy of Appellant’s Social Security Card;
- Exhibit 7: Application Snapshot;
- Exhibit 8: Copy of Appellant’s Passport;
- Exhibit 9: Letter from OVR dated December 11, 2020;
- Exhibit 10: Governor’s Memorandum dated March 15, 2020;

- 1 Exhibit 11: Department Case Notes;
2 Exhibit 12: Email from PUA Coordinator Mario Kaipat dated November 12, 2020;
3 Exhibit 13: Email from PUA Coordinator Mario Kaipat dated November 23, 2020;
4 Exhibit 14: Email from PUA Coordinator Mario Kaipat dated January 13, 2021; and
5 Exhibit 15: Notice of Determination of PUA Overpayment dated February 19, 2021.

6 For the reasons stated below, the Department's Determination dated February 01, 2021 is
7 **AFFIRMED**. Claimant is not eligible for benefits for the period of February 09, 2020 to
8 September 05, 2020.

8 II. JURISDICTION

9 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
10 2020 was signed into law creating new temporary federal programs for unemployment benefits
11 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
12 Compensation ("FPUC").² On March 29, 2020, the CNMI Government executed an agreement
13 with the US Secretary of Labor to operate the PUA and FPUC program in accordance to
14 applicable law.³ The CNMI Department of Labor is charged with the responsibility in
15 administering the above-mentioned programs in the CNMI. The CNMI Department of Labor
16 Administrative Hearing Office has been designated to preside over first level appeals under PUA.

17 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
18 established.

19 III. PROCEDURAL HISTORY & ISSUE

20 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
21 review of Appellant's application and supporting documents, the Department issued its
22 determination on February 01, 2021. The Department's determination found the Appellant was
23 ineligible to receive benefits from February 09, 2020 to September 05, 2020.

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27 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii Employment Security Law applies, to the extent it does not conflict with federal law.

1 Appellant filed the present appeal on February 04, 2021. The issues on appeal are 1) whether
2 Appellant is eligible for Pandemic Unemployment Assistance and 2) whether there are any
3 overpayments necessitating the return of PUA funds in this case.

4 IV. FINDINGS OF FACT

5 In consideration of the evidence provided and credibility of witness testimony, the
6 undersigned issues the following findings of fact:

- 7 1. Appellant was unemployed prior to the COVID-19 public health emergency. Appellant's
8 last place of employment, prior to COVID-19, was at Oleai Elementary School. His last
9 date of employment was in January of 2018.
- 10 2. On June 18, 2020, Appellant filed an online application to claim unemployment benefits
11 under PUA and FPUC programs. In the application Appellant certified that he was
12 scheduled to commence employment and did not have a job or was unable to reach his job
13 as a direct result of the COVID-19 public health emergency. Appellant also stated that
14 his place of employment was closed as a direct result of the COVID-19 public health
15 emergency. In the application, Appellant certified that he was approved for on-the-job
16 training at the Office of Vocational Rehabilitation ("OVR") and that the date he began
17 work was February 01, 2020. Furthermore, Appellant, under penalty to perjury, stated that
18 the last date he performed work was on February 10, 2020.⁴
- 19 3. Appellant did not work at OVR on February 01, 2020 to February 10, 2020.⁵
- 20 4. From August 31, 2020 to November 30, 2020 Appellant participated in a work experience
21 training program at OVR.⁶
- 22 5. OVR assigned Appellant to work at Garapan Elementary School where he served as a
23 front-desk clerk. Appellant worked 20 hours a week at \$7.25 per hour.⁷
- 24 6. On February 01, 2021, the Department disqualified Appellant from receiving PUA
25 benefits effective February 09, 2020 to September 05, 2020 because he was already
26 unemployed prior to the COVID-19 public health emergency.⁸

27 ⁴ Exhibit 7.

28 ⁵ Exhibit 11.

⁶ Exhibit 9.

⁷ Exhibit 11.

⁸ Exhibit 1.

- 1 7. On February 04, 2021, Appellant filed the present appeal, claiming that he applied for a
2 job at FEMA and was among the qualified candidates.⁹
3 8. On February 19, 2021, the Department issued a Notice of Overpayment. The Department
4 determined that Appellant was overpaid a total of \$21,585.00 for the weeks of February
5 15, 2020 to September 26, 2020. Appellant received \$10,200.00 in FPUC benefits and
6 \$11,385.00.00 in PUA benefits.¹⁰
7 9. Appellant claims that he was supposed to work at FEMA but such job opportunity was
8 put on hold due to COVID-19.
9 10. Appellant did not receive a job offer from FEMA, nor did he receive a notification to
10 begin work.
11 11. Appellant claims that he spent all the money he received on various bills. Appellant claims
12 he does not have the means to repay the \$21,585.00.
13 12. Appellant is a person with disabilities as defined by Federal law.¹¹
14 13. Appellant's current income is disability insurance from the Social Security Administration
15 in the amount of \$646.00 per month.¹²

V. CONCLUSIONS OF LAW

15 In consideration of the above-stated findings and applicable law, the undersigned issues the
16 following conclusions of law:

17 **1. Appellant's employment was not affected as a direct result of COVID-19.**

18 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a
19 number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be
20 qualified for regular unemployment, extended benefits under state or federal law, or pandemic
21 emergency unemployment compensation (PEUC).¹³ Second, the claimant must show that he or
22 she is able and available for work, as defined by Hawaii law, except they are unemployed,
23 partially unemployed, or unable to work or unable for work due to at least one of the following
24 COVID-19 reasons identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

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27 ⁹ Exhibit 2.

¹⁰ Exhibit 15.

¹¹ Exhibit 3.

¹² Exhibit 3.

¹³ This was not at issue in this matter.

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- (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- (b) A member of the individual's household has been diagnosed with COVID-19;
- (c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- (d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- (e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- (f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to quarantine due to concerns related to COVID-19;
- (g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- (h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- (i) The individual has to quit his or her job as a direct result of COVID-19;
- (j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or
- (k) The individual meets any additional criteria established by the US Secretary of Labor for unemployment assistance under PUA.

Additional criteria established by the US Secretary of Labor under item (k)¹⁴, above, includes:

- (1) The individual is an independent contractor who is unemployed (total or partial) or is unable or unavailable to work because of the COVID-19 public health emergency has severely limited his or her ability to continue performing the customary job;
- (2) The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines;
- (3) An individual provides services to an educational institution or educational service agency and the individual is unemployed or

¹⁴ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

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partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures; and
(4) An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.

Here, it is clear that Appellant was unemployed prior to the COVID-19 public health emergency. First of all, contrary to Appellant's statements on his online application, he was not employed by OVR from February 01, 2020 to February 10, 2020. Secondly, even if Appellant applied for a job at FEMA, he was not hired by FEMA. Appellant was not given a job offer by FEMA, nor was he advised to begin work. Finally, there was no evidence to support Appellant's contention that he was 1) selected by FEMA and 2) such job was placed on hold due to COVID-19.

The undersigned notes that Appellant's last place of employment prior COVID-19 was at Oleai Elementary School. However, Appellant's unemployment was not a direct result of COVID-19 as Appellant's last day of employment occurred two years before the COVID-19 public health emergency.

2. An overpayment occurred and Appellant is required to pay the amount back.

"Benefits shall be paid promptly in accordance with a determination, redetermination, or decision or appeal."¹⁵ However, "[a]ny individual who has received any amount as benefits . . . to which the individual was not entitled shall be liable for the amount unless the overpayment was received without fault on the part of the recipient and its recovery would be against equity and good conscience."¹⁶ Fault¹⁷ is defined as:

- (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

¹⁵ HRS § 383-43.
¹⁶ HRS § 383-44.
¹⁷ HRS 12-5-83.

1 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
2 individual below the poverty line and taking away basic necessities to live. In evaluating equity
3 and good conscience,¹⁸ the factors to consider include, but are not limited to:

- 4 (A) Whether notice of a redetermination was given to the claimant,
5 as required ...
6 (B) Hardship to the claimant that the repayment may impose; and
7 (C) The effect, if any, that the repayment will have upon the
8 fulfillment of the objectives of the program.¹⁹

9 Considering that Appellant’s employment was not directly affected by the COVID-19
10 pandemic, the \$11,385.00 in PUA benefits and \$10,200.00 in FPUC benefits received by
11 Appellant is an overpayment. The undersigned finds that the overpayment was Appellant’s fault.
12 First, Appellant provided statements that he should have known to be incorrect. Specifically, he
13 incorrectly stated in his online application that he was scheduled to commence employment, when
14 he was never offered a job by an employer. Moreover, Appellant stated in his online application
15 that his place of employment was closed as a direct result of COVID-19, when Appellant was
16 already unemployed prior to the COVID-19 public health emergency. Accordingly, the
17 undersigned finds that the overpayment was Appellant’s fault.

18 The undersigned notes that repayment by Appellant would be contrary to equity and good
19 conscience. First, Appellant is an unemployed individual with disabilities. Secondly, Appellant’s
20 only source of income is disability insurance from the Social Security Administration, in the
21 amount of \$646.00 per month. Appellant’s personal expenses include legal, transportation, school
22 and food expenses. Due to Appellant’s physical disability, Appellant currently lives with his
23 parents. Appellant’s mother is unemployed and his father is a retiree on fixed-income.

24 Nonetheless, since the overpayment was Appellant’s fault, he is not eligible for a waiver.

25 ///

26 ///

27 ¹⁸ *Id.*

28 ¹⁹ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. PUA is not an excuse to refuse suitable work. PUA is not free or unencumbered money. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

VI. ORDER

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Determination is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of February 09, 2020 to September 05, 2020.
3. Appellant shall promptly submit to a repayment plan with the Benefit Payment Control Unit. Appellant shall pay monthly installments of, at least, \$50.00 by the first of each month, beginning June 01, 2021, until the entire overpayment is completely paid;
4. The CNMI Department of Labor Benefit Payment Control Unit shall notify the CNMI Department of Finance of this overpayment in federal funds. Where possible, BPC shall collect any of Appellant's tax rebates, tax refunds, stimulus checks, or other federal funds to satisfy this debt.

If a party is aggrieved by this Order and would like to contest the decision, he or she must submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The written request must be submitted to the Administrative Hearing Office, either in person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at hearing@dol.gov.mp.

In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 14th day of April, 2021.

/s/
JOEY P. SAN NICOLAS
Pro Tem Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0056
)	
Nicole Robey,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on March 26, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Nicole Robey (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Coordinator Vincent Sablan.

Witnesses:

1. Suhyun “Grace” Jo, Vice President of Monster Pizza Pub, Inc.
2. Jane Moreland, Manager of Monster Pizza Pub, Inc.

Exhibits:

1. Exhibit 1: Appellant’s Application Snapshot;
2. Exhibit 2: Department’s Disqualifying Determination (dated February 8, 2021);
3. Exhibit 3: Department’s Notice of Overpayment (dated February 9, 2021);
4. Exhibit 4: Appellant’s Request to File an Appeal (filed February 9, 2021);
5. Exhibit 5: Notice of Hearing (issued February 9, 2021);
6. Exhibit 6: Copy of Appellant’s Identification Card;
7. Exhibit 7: Copy of Employer Memorandum re: Reduction in Hours (dated March 9, 2020);
8. Exhibit 8: Copy of Appellant’s Certificate of Employment dated April 14, 2020;

9. Exhibit 9: Copy of Appellant's Application of Leave dated August 15, 2020;
10. Exhibit 10: Copy of Appellant's Letter of Termination dated August 26, 2020
11. Exhibit 11: Copy of Appellant's Letter of Termination dated January 15, 2021
12. Exhibit 12: Copy of Messages between Appellant and Employer
13. Exhibit 13: Copy of Disciplinary Action Form
14. Exhibit 14: Copy of Employee Handbook
15. Exhibit 15: Copy of Email
16. Exhibit 16: Copy of Department's Audit Sheet

For the reasons stated below, the Department's Determination dated February 8, 2021 is **AFFIRMED**. Claimant is not eligible for benefits for the period of August 23, 2020 to December 26, 2020. The CNMI Department of Labor's Notice of Overpayment, dated February 9, 2021, is **AFFIRMED**. Appellant was overpaid in the total amount of \$4,340.00 and is liable to repay said amount.

II. JURISDICTION

On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of 2020 was signed into law creating new temporary federal programs for unemployment benefits called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said federal unemployment insurance programs, which, among other things, extended the PUA and FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office has been designated to preside over appeals of agency decisions.

¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
2 established.

3 III. PROCEDURAL HISTORY & ISSUES

4 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
5 review of Appellant's application and supporting documents, the Department issued a
6 Disqualifying Determination on February 8, 2021. On February 9, 2021, the Department issued a
7 Notice of Determination of PUA Overpayment (i.e., Overpayment Notice). On February 9, 2021,
8 Appellant filed a request to appeal the determination notice of overpayment stating that the reason
9 she was fired was because the employer made her quarantine and was asking about a loan. As
10 stated in the Notice of Hearing issued that same day, the issues on appeal are: (1) whether
11 Appellant is eligible for PUA; and (2) whether an overpayment occurred and funds should be
12 returned.

12 IV. FINDINGS OF FACT

13 In consideration of the evidence provided and credibility of witness testimony, the
14 undersigned issues the following findings of fact:

- 15 1. In relation to this claim, Appellant was employed as a server at Monster Pizza Pub Inc.
16 ("Employer"), located in Garapan, Saipan.⁵ Prior to the pandemic, Appellant was a full-
17 time employee paid at the rate of \$ 7.43 per hour.⁶ Due to the economic impact of the
18 pandemic, Employer implemented cost cutting measures and reduced Appellant's hours,
19 effective March 9, 2020.⁷
- 20 2. Appellant filed a paper application to claim PUA and FPUC benefits.⁸ Appellant does not
21 know when the claim was submitted because she hired a document handler to prepare the
22 documents and file her claims. Appellant provided the necessary information, reviewed
23 or verified the documents prior to its submission, and signed the certifications.
- 24 3. On August 24, 2020, the Department received Appellant's Initial Claim and supporting
25 documents. After reviewing necessary corrections with Appellant, the Department
26 inputted the initial application and supporting documents onto the online portal.⁹

27
28 ⁵ Exhibit 8.

⁶ *Id.*

⁷ Exhibit 7.

⁸ Exhibit 1.

⁹ *Id.*

- 1 4. On the initial application, Appellant certified under penalty of perjury that her
2 employment was affected as a direct result of COVID-19 because “my place of
3 employment is closed as a direct result of the COVID-19 public health emergency,”
4 effective March 19, 2020.
- 5 5. On August 15, 2020, Appellant took leave to self-quarantine at home after a member of
6 the household tested positive COVID-19 results.¹⁰ Employee was not allowed to return to
7 work until she was COVID-tested and cleared. Appellant was not tested and did not return
8 to work since she was terminated shortly thereafter.
- 9 6. Appellant was terminated because her working relationship with the Employer
10 deteriorated after numerous requests for cash advances and a disagreement over the
11 Appellant’s eligibility for wages under the Paycheck Protection Program (“PPP”).
12 Employer felt harassed by late night or drunk messages.¹¹ Also, Employer felt threatened
13 after Appellant stated she would post company issues on social media and initiate legal
14 proceedings against the Employer for unknown reasons.¹² After seeking legal counsel,¹³
15 Employer decided to terminate Appellant effective August 26, 2020.¹⁴
- 16 7. Appellant did not report she was terminated for cause and continued to file weekly
17 certifications for unemployment assistance.¹⁵
- 18 8. On January 15, 2021, Employer submitted a written memorandum to the Department’s
19 Benefit Payment Control Unit (“BPC”) stating that Appellant was terminated on August
20 26, 2020 for violating company policies, namely, harassment of supervisors and
21 insubordination.¹⁶
- 22 9. Appellant’s unemployment claims were part of a targeted audit by the Department’s
23 Benefit Payment Control Unit. On February 8, 2021, the Department disqualified
24 Appellant from receiving PUA benefits from August 23, 2020 to December 26, 2020.¹⁷
25 The Determination stated that the Appellant was not qualified to receive PUA because her
26 unemployment was not caused by one of the specific COVID-19 qualifying reason under
27 the CARES Act.

28 ¹⁰ Exhibit 9.

¹¹ Exhibit 12.

¹² *Id.*

¹³ Exhibit 15.

¹⁴ Exhibit 10.

¹⁵ Exhibit 16.

¹⁶ Exhibit 11.

¹⁷ Exhibit 2.

1 10. On February 9, 2021, the Department issued a Notice of Overpayment.¹⁸ There it finds
2 that Appellant was overpaid in the total amount of \$4,340.00 in PUA benefits for the
3 weeks ending August 29, 2020 to December 26, 2020. Appellant does not contest
4 receiving this amount. Appellant does not receive unemployment benefits from any other
5 state or federal program.

6 11. The overpayment occurred as a result of Appellant's failure to provide complete and
7 accurate information in the weekly certifications and failure to report that she was
8 terminated for cause.

9 12. Appellant used a significant portion of the received unemployment benefits to pay for
10 outstanding bills and basic needs. While Appellant has not returned to the workforce,
11 Appellant would be able to repay the overpayment by offsetting unemployment benefits
12 due to her.¹⁹

13 13. On February 9, 2021, Appellant filed the present Appeal.²⁰

14 V. CONCLUSIONS OF LAW

15 In consideration of the above-stated findings and applicable law, the undersigned issues the
16 following conclusions of law:

17 1. Appellant's employment was not affected as a direct result of COVID-19.

18 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and
19 FPUC benefits are available to "covered individuals." A "covered individual" is someone who:
20 (1) is not eligible for regular compensation or extended benefits under State or Federal law or
21 pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including
22 an individual who has exhausted all rights to regular unemployment or extended benefits under State
23 or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;²¹ (2) self-
24 certifies²² that the individual is unemployed, partially unemployed, or unable or unavailable to work²³
25 as a direct result²⁴ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and

26 ¹⁸ Exhibit 3.

27 ¹⁹ Exhibit 16.

28 ²⁰ Exhibit 4.

²¹ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal unemployment insurance programs in the CNMI.

²² The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of perjury.

²³ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible for benefits. See HAR § 12-5-35.

²⁴ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events precipitated or exacerbated by the pandemic.

1 (3) provides required documentation of employment/self-employment within the applicable period of
2 time.²⁵

3 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
4 specifically identifies the COVID-19 qualifying reasons²⁶ as:

- 5 (aa) The individual has been diagnosed with COVID-19 or is
6 experiencing symptoms of COVID-19 and is seeking a medical
7 diagnosis;
- 8 (bb) A member of the individual's household has been diagnosed with
9 COVID-19;
- 10 (cc) The individual is providing care for a family member or a member
11 of the individual's household who has been diagnosed with
12 COVID-19;
- 13 (dd) A child or other person in the household for which the individual
14 has primary caregiving responsibility is unable to attend school or
15 another facility that is closed as a direct result of the COVID-19
16 public health emergency and such school or facility care is
17 required for the individual to work;
- 18 (ee) The individual is unable to reach the place of employment because
19 of a quarantine imposed as a direct result of the COVID-19 public
20 health emergency;
- 21 (ff) The individual is unable to reach the place of employment because
22 the individual has been advised by a health care provider to
23 quarantine due to concerns related to COVID-19;
- 24 (gg) The individual was scheduled to commence employment and does
25 not have a job or is unable to reach the job as a direct result of the
26 COVID-19 public health emergency;
- 27 (hh) The individual has become the breadwinner or major support for
28 a household because the head of the household has died as a direct
result of COVID-19;
- (ii) The individual has to quit his or her job as a direct result of
COVID-19;
- (jj) The individual's place of employment is closed as a direct result
of the COVID-19 public health emergency; or
- (kk) The individual meets any additional criteria established by the US
Secretary of Labor for unemployment assistance under PUA.

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²⁵ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020.

²⁶ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

1 Additional criteria established by the US Secretary of Labor under item (kk)²⁷, above, includes:

- 2 (1) The individual is an independent contractor who is unemployed
3 (total or partial) or is unable or unavailable to work because of the
4 COVID-19 public health emergency has severely limited his or
5 her ability to continue performing the customary job;
6 (2) The individual has been denied continued unemployment benefits
7 because the individual refused to return to work or accept an offer
8 of work at a worksite that, in either instance, is not in compliance
9 with local, state, or national health and safety standards directly
10 related to COVID-19. This includes, but is not limited to, those
11 related to facial mask wearing, physical distancing measures, or
12 the provision of personal protective equipment consistent with
13 public health guidelines;
14 (3) An individual provides services to an educational institution or
15 educational service agency and the individual is unemployed or
16 partially unemployed because of volatility in the work schedule
17 that is directly caused by the COVID-19 public health emergency.
18 This includes, but is not limited to, changes in schedules and
19 partial closures; and
20 (4) An individual is an employee and their hours have been reduced
21 or the individual was laid off as a direct result of the COVID-19
22 public health emergency.

23 Here, Appellant submitted a claim for PUA and FPUC Benefits self-certifying, under penalty
24 of perjury, that her employment was affected as a direct result of COVID-19 because the place of
25 employment was closed, effective March 19, 2020. However, on August 26, 2020²⁸, Appellant
26 was terminated for cause, unrelated to the above-mentioned COVID-19 qualifying reasons listed
27 above. Appellant argues that she should qualify for PUA because her hours were reduced, she
28 had to care for her young children who were taking online classes, and the termination arose after
a member of her household tested positive of COVID-19.

Appellant's arguments are not persuasive. Based on the evidence and testimony provided, it
is clear that Appellant was terminated after the working relationship with the Employer
deteriorated. Specifically, Employer disagreed as to Appellant's eligibility for PPP and disliked
the numerous requests for cash advances. Also, Employer testified under oath to feeling harassed
and threatened by Appellant's late night, drunk message(s). Employer did not report the
harassment or issues to the police to avoid creating additional problems for Appellant. Instead,

²⁷ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

²⁸ Since the date of termination fell between a work week, Appellant was disqualified for PUA benefits from the beginning of the work week, August 23, 2020.

1 Appellant sought legal advice and decided to terminate Appellant for harassment and
2 insubordination.

3 Based on the applicable law and evidence provided, Appellant does not meet any of the
4 COVID-19 qualifying reasons for the time frame in question. Accordingly, Appellant's
5 employment was not affected as a direct result of COVID-19 and Appellant is not eligible to
6 receive PUA or FPUC benefits.

7 **2. Appellant was overpaid and not entitled to a waiver.**

8 "Benefits shall be paid promptly in accordance with a determination, redetermination, or
9 decision or appeal."²⁹ However, "[a]ny individual who has received any amount as benefits . . .
10 to which the individual was not entitled shall be liable for the amount unless the overpayment was
11 received without fault on the part of the recipient and its recovery would be against equity and
12 good conscience."³⁰ Fault³¹ is defined as:

- 13 (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- 14 (B) Failure to furnish information which the individual knew or should have known to be material; or
- 15 (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

16 Based on federal guidance, "contrary to equity and good conscience" is tantamount to placing an
17 individual below the poverty line and taking away basic necessities to live. In evaluating equity
18 and good conscience,³² the factors to consider include, but are not limited to:

- 19 (A) Whether notice of a redetermination was given to the claimant,
20 as required . . .
- 21 (B) Hardship to the claimant that the repayment may impose; and
- 22 (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.³³

23 ²⁹ HRS § 383-43.

24 ³⁰ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
25 to repay these amounts to the state agency. Thereunder, the state has authority to waive repayments of FPUC if the
26 payment was without fault on the part of the individual and such repayment would be contrary to equity and good
27 conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and
28 authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the
part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

³¹ HRS 12-5-83.

³² *Id.*

³³ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a
pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program
and availability of funds for eligible or qualified individuals.

1 Considering the discussion above, Appellant should not have been paid benefits under PUA
2 or FPUC after she was terminated for cause. Moreover, considering that Appellant does not
3 contest the amount listed in the Notice of Overpayment and confirmed receiving the total sum of
4 \$4,340—it is clear that the overpayment occurred.

5 Based on the evidence presented and applicable law, Appellant is not entitled to a waiver of
6 repaying the overpayment amount. Here, fault must be assigned, in part, to Appellant because the
7 overpayment occurred as a result of Appellant's failure to provide complete and accurate
8 information in the weekly certifications and failure to report that she was terminated for cause.
9 Moreover, in considering other factors, the undersigned recognizes that Appellant is able to repay
10 the amount by offsetting unemployment benefits owed to her. In sum, Appellant is overpaid in
11 the amount of \$4,340.00 and is liable to repay that amount.

11 VI. DECISION

12 For the reasons stated above, it is ORDERED that:

- 13 1. The CNMI Department of Labor's Disqualifying Determination, dated February 8, 2021,
14 is **AFFIRMED**;
- 15 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of August 23,
16 2020 to December 26, 2020.
- 17 3. The CNMI Department of Labor's Notice of Overpayment, dated February 9, 2021, is
18 **AFFIRMED**;
- 19 4. Appellant was overpaid in the total amount of \$4,340.00 and is not entitled to a waiver
20 for repayment; and
- 21 5. The CNMI Department of Labor Benefit Payment Control Unit shall offset benefits
22 owed to Appellant by the overpayment amount and process payment in a timely manner.

23 If a party is aggrieved by this Order and would like to contest the decision, he or she must
24 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
25 written request should be supported by legal, factual, or evidentiary reasons to reopen the
26 decision. The written request must be submitted to the Administrative Hearing Office, either in
27 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
28 hearing@dol.gov.mp.

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In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 1st day of April, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



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**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In Re Matter of:) PUA Case No. 21-0057
)
Ana Cepeda,)
)
Appellant,) **ADMINISTRATIVE ORDER**
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on March 11, 2021 and March 16, 2021 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Ana Cepeda (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Coordinator Vince Sablan. There were no other witnesses who gave testimony at the hearing.

1. Exhibit 1: Appellant’s Application Snapshot;
2. Exhibit 2: Appellant’s Weekly Certification;
3. Exhibit 3: Department’s Notice of Overpayment (issued February 1, 2021)
4. Exhibit 4: Department’s Disqualifying Determination (Mail Date February 4, 2021)
5. Exhibit 5: Request to File an Appeal and Letter (filed February 9, 2021);
6. Exhibit 6: Notice of Hearing (issued February 9, 2021);
7. Exhibit 7: Letter from Carolinian Affairs Office (dated February 2, 2021)
8. Exhibit 8: Copy of Appellant’s Business License Application
9. Exhibit 9: Copy of Appellant’s Business License for Arts & Crafts (Cultural Beads) (issued October 28, 2020); and
10. Exhibit 10: Copy of Appellant’s Business License for House Rental (issued October 28, 2020)

1 11. Exhibit 11: Copy of Appellant's Monthly Business Gross Revenue Tax Return
2 (January to December 2020); and

3 12. Exhibit 12: Copy of Department's Case Notes.

4 For the reasons stated below, the Department's Disqualifying Determination dated February
5 4, 2021 is **AFFIRMED**. Claimant was not eligible for benefits for the period of March 1, 2020
6 through December 26, 2020. Also, the Department's Notice of Overpayment dated February 1,
7 2021 is **AFFIRMED**. Appellant was overpaid a total of \$20,030.00 in PUA and FPUC benefits.
8 Based on the evidence and applicable law, Appellant is not eligible for a waiver of repayment and
9 must repay the overpayment.

10 II. JURISDICTION

11 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
12 2020 was signed into law creating new temporary federal programs for unemployment benefits
13 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
14 Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed
15 Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said
16 federal unemployment insurance programs, which, among other things, extended the PUA and
17 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
18 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is
19 charged with the responsibility in administering the above-mentioned programs in the CNMI in
20 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
21 has been designated to preside over appeals of agency decisions.

22 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
23 established.

24 III. PROCEDURAL HISTORY & ISSUES

25 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
26 February 1, 2021, the Department issued a Notice of Determination of Pandemic Unemployment

27 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

28 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 Assistance Overpayment (“Notice of Overpayment”) stating that the documents provided did not
2 substantiate Appellant’s claim of self-employment and Appellant’s unemployment was not a
3 direct result of the COVID-19 pandemic. The Notice of Overpayment also specified that
4 Appellant was overpaid the total amount of \$20,030.00 in PUA and FPUC benefits for weeks
5 ending March 7, 2020 through November 28, 2020. On February 4, 2021, the Department issued
6 a Disqualifying Determination effective March 1, 2020 to December 26, 2020. On February 9,
7 2021, Appellant filed a request to appeal the notice of overpayment. As stated in the Notice of
8 Hearing issued that same day, the issues on appeal are: (1) whether Appellant is eligible for PUA;
9 and (2) whether an overpayment occurred and funds should be returned.

10 IV. FINDINGS OF FACT

11 In consideration of the evidence provided and credibility of witness testimony, the
12 undersigned issues the following findings of fact:

- 13 1. Appellant did not have a recent attachment to the CNMI work force prior to the pandemic.
14 Specifically, Appellant last worked as an Account Receivable Trainee for Saipan
15 Stevedore in 2016. Appellant resigned from Saipan Stevedore on or around March 2016
16 for personal reasons unrelated to COVID-19. Appellant was not employed anywhere else
17 since then but had sporadic and irregular income from selling goods from her farm (i.e.,
18 hot pepper, coconut oil, and fruit), catering, and yard cleaning work. Appellant did not
19 have a business license for this work and reported zero income for 2019.⁵
- 20 2. On or around December 2019, Appellant began visiting the Carolinian Affairs Office and
21 took part in a bead making class.⁶ Appellant was encouraged and interested in selling her
22 beadwork at community events, such as the 2020 Flame Tree Arts Festival. Throughout
23 2020, Appellant was planning her bead making business by: (1) learning designs; (2)
24 buying inventory; (3) making products; and (4) advertising her business to her family and
25 friends. For the year 2020, Appellant consistently worked approximately 20 hours a week
26 on her beadwork from her home. Appellant sold two necklaces in April of 2020 for the
27 total sum of \$175. This \$175 was reported in her December 2020 Business Gross Revenue
28 Taxes.⁷ Since community events were cancelled and people were suffering from a loss of
income, Appellant was unable to sell more of her products.

⁵ Exhibit 1.

⁶ Exhibit 7.

⁷ Exhibit 11.

- 1 3. Appellant also operated a house rental business and regularly received \$500 income in
2 rental fees from January to December 2020.⁸
- 3 4. On or around August 3, 2020, Appellant filed an online application to claim
4 unemployment benefits under the PUA and FPUC programs.⁹ In the application,
5 Appellant certified under penalty of perjury that her employment was affected by the
6 COVID-19 public health emergency for an unspecified reason and the last date she
7 performed work was March 1, 2020. Appellant's testimony clarified that this unspecified
8 reason was due to her self-employment. Thereafter, Appellant filed weekly certifications
9 claiming that she was still affected by COVID-19 because her place of employment was
10 closed.¹⁰
- 11 5. In 2020, the PUA program relied on each claimant's self-certifications and did not require
12 claimants to submit documents to substantiate their claims, unless audited or requested.
13 In her initial application, Appellant acknowledged and certified that all the information
14 submitted is true and correct.¹¹ Appellant further acknowledged and understood that it was
15 her responsibility to read the PUA Handbook and provided material so that she can
16 provide complete and accurate information in her claims.¹²
- 17 6. Based on the evidence presented and testimony provided, Appellant's self-certifications
18 under the initial and weekly applications are inaccurate and untrue. Specifically, she did
19 not meet the criteria of a self-employed worker whose customary work activities were
20 severely limited by COVID-19 and her place of employment was not closed.
- 21 7. In filing her claims, Appellant did not provide supporting documentation to substantiate
22 how COVID-19 affected her employment or the above-mentioned certifications.
23 Specifically, Appellant did not have a valid business license to operate two said business
24 until October 2020 and did not report income until after getting her business license.¹³
- 25 8. Moreover, in filing her claims, Appellant did not report the income she received from the
26 house rental and bead making business.¹⁴

27 ⁸ Exhibits 10 and 11.

28 ⁹ Exhibit 1.

¹⁰ Exhibit 2.

¹¹ Exhibit 1.

¹² *Id.*

¹³ Exhibit 9-11.

¹⁴ Exhibit 2.

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9. Based on the inaccurate and untrue information Appellant certified to in the initial application and weekly certifications, Appellant’s claims were processed for payment.
10. On August 12, 2020, Appellant received a lump sum check payment of \$16, 310 for PUA and FPUC benefits for the work weeks March 7, 2020 to August 6, 2020. In December of 2020, Appellant received 12 PUA checks in the amount of \$310 for work weeks ending September 12, 2020 to November 28, 2020.
11. On or around October 15, 2020, Appellant submitted an application for a business license for the above-mentioned business – after a business license was requested.¹⁵ On October 28, 2020, the Department of Finance issued Appellant two business licenses as a sole proprietor to engage in the business of: (1) house rental; and (2) arts & crafts (cultural beads). Both business licenses are valid from October 20, 2020 to October 20, 2021.
12. This overpayment case was the result of a targeted audit. Appellant called to inquire about missing payments and the PUA Call Center referred the matter to the Department’s Benefit Payment Control Unit (“Department’s BPC Unit”) due to missing documents. The Department’s BPC Unit conducted an investigation and interviewed the Appellant.¹⁶
13. Subsequently, on February 1, 2021, the Department’s Benefit Payment Control Unit issued a Notice of Overpayment.¹⁷ The Notice found that Appellant was overpaid \$20,030 for the weeks ending March 7, 2020 to November 28, 2020 because Appellant could not substantiate the information she provided in the Application. The total amount of \$20,030 is \$10,850 in PUA benefits and \$9,180 in FPUC benefits. Appellant does not contest that she received that amount.
14. On February 4, 2021, the Department issued a Disqualifying Determination finding Appellant ineligible for PUA and FPUC benefits effective March 1, 2020 to December 26, 2020.¹⁸ The Determination states the following reasons to support disqualification: (1) the business Appellant’s claimed as self-employment was not started until October 20, 2020; (2) based on the documents provided, there is no showing of a loss of income; and (3) and the unemployment was not a direct result of COVID-19.
15. Appellant claims she spent all the money received on various bills and bought a boat. Appellant claims she does not have the means to repay the \$20,030 overpayment.

¹⁵ Exhibit 8.
¹⁶ Exhibit 12.
¹⁷ Exhibit 3.
¹⁸ Exhibit 4.

1 16. On February 9, 2021, Appellant filed the present Appeal.¹⁹ In support of the Appeal,
2 Appellant included, among other things, a letter explaining her basis for appeal and a letter
3 from the Carolinian Affairs Office.²⁰

4 17. On February 9, 2021, the Administrative Hearing Office issued a Notice of Hearing
5 scheduling the appeal for March 11, 2021.²¹

6 V. CONCLUSIONS OF LAW

7 In consideration of the above-stated findings and applicable law, the undersigned issues the
8 following conclusions of law:

9 1. Appellant's employment was not affected as a direct result of COVID-19.

10 In accordance with the CARES Act and Continued Assistance Act, payment of PUA and
11 FPUC benefits are available to "covered individuals." A "covered individual" is someone who:
12 (1) is not eligible for regular compensation or extended benefits under State or Federal law or
13 pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including
14 an individual who has exhausted all rights to regular unemployment or extended benefits under State
15 or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107;²² (2) self-
16 certifies²³ that the individual is unemployed, partially unemployed, or unable or unavailable to work²⁴
17 as a direct result²⁵ of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, and
18 (3) provides required documentation of employment/self-employment within the applicable period of
19 time.²⁶

20 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
21 specifically identifies the COVID-19 qualifying reasons²⁷ as:

22 ¹⁹ Exhibit 5.

23 ²⁰ Exhibit 5 and 7.

24 ²¹ Exhibit 6.

25 ²² This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
26 unemployment insurance programs in the CNMI.

27 ²³ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
28 perjury.

²⁴ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
for benefits. *See* HAR § 12-5-35.

²⁵ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

²⁶ Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
employment or self-employment, or the planned commencement of employment or self-employment, if he or she
files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31,
2021 and receives PUA benefits on or after December 27, 2020.

²⁷ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- 1 (aa) The individual has been diagnosed with COVID-19 or is experiencing
symptoms of COVID-19 and is seeking a medical diagnosis;
- 2 (bb) A member of the individual's household has been diagnosed with
COVID-19;
- 3 (cc) The individual is providing care for a family member or a member of
4 the individual's household who has been diagnosed with COVID-19;
- 5 (dd) A child or other person in the household for which the individual has
primary caregiving responsibility is unable to attend school or another
6 facility that is closed as a direct result of the COVID-19 public health
emergency and such school or facility care is required for the
7 individual to work;
- 8 (ee) The individual is unable to reach the place of employment because of
a quarantine imposed as a direct result of the COVID-19 public health
9 emergency;
- 10 (ff) The individual is unable to reach the place of employment because
the individual has been advised by a health care provider to
11 quarantine due to concerns related to COVID-19;
- 12 (gg) The individual was scheduled to commence employment and does not
have a job or is unable to reach the job as a direct result of the
13 COVID-19 public health emergency;
- 14 (hh) The individual has become the breadwinner or major support for a
household because the head of the household has died as a direct
15 result of COVID-19;
- 16 (ii) The individual has to quit his or her job as a direct result of COVID-
17 19;
- 18 (jj) The individual's place of employment is closed as a direct result of
the COVID-19 public health emergency; or
- 19 (kk) The individual meets any additional criteria established by the US
Secretary of Labor for unemployment assistance under PUA.

20 Additional criteria established by the US Secretary of Labor under item (kk)²⁸, above, includes:

- 21 (1) An individual who works as an independent contractor with reportable
22 income may also qualify for PUA benefits if he or she is unemployed,
partially employed, or unable or unavailable to work because the COVID-
23 19 public health emergency has severely limited his or her ability to
continue performing his or her customary work activities, and has thereby
24 forced the individual to suspend such activities;
- 25 (2) An individual who has been denied continued unemployment benefits
because the individual refused to return to work or accept an offer of
26 work at a worksite that, in either instance, is not in compliance with
local, state, or national health and safety standards directly related to
27 COVID-19. This includes, but is not limited to, those related to facial
mask wearing, physical distancing measures, or the provision of
28 personal protective equipment consistent with public health guidelines;

²⁸ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

- 1 (3) An individual who provides services to an educational institution or
2 educational service agency and the individual is unemployed or partially
3 unemployed because of volatility in the work schedule that is directly
4 caused by the COVID-19 public health emergency. This includes, but is
5 not limited to, changes in schedules and partial closures; and
6 (4) An individual who is an employee and their hours have been reduced or
7 the individual was laid off as a direct result of the COVID-19 public
8 health emergency.

9 Here, Appellant submitted a claim for PUA and FPUC benefits self-certifying, under penalty
10 of perjury, that her employment was affected by the COVID-19 public health emergency for an
11 unspecified reason and the last date she performed work was March 1, 2020. When asked to
12 clarify about her unlisted reason in the initial application, Appellant stated she was self-employed
13 and experienced a loss of income because community events where she planned to sell her
14 products were cancelled. Thereafter, Appellant filed weekly certifications claiming that she was
15 still affected by COVID-19 because her place of employment was closed. Based on the evidence
16 presented and testimony provided, Appellant does not meet the criteria to self-certify under the
17 designated provisions.

18 First, with respect to Appellant's initial certification, there is no showing that COVID-19
19 severely limited Appellant's ability to perform customary work activities. Here, it is important to
20 note that Appellant's unemployment predated the pandemic. Moreover, while Appellant may be
21 considered self-employed with a license to engage in the business of house rentals and arts and
22 crafts, these businesses were created after she began to claim unemployment benefits. The
23 undersigned recognizes that Appellant began learning her craft and planning her sales sometime
24 between December 2019 and early 2020, however, Appellant did not have a legitimate business
25 until October of 2020 when she received her business license. Further, in reviewing the BGRs,
26 Appellant consistently reported \$500 income from the house rental business from January to
27 December of 2020 and \$175 income from her arts and crafts business in December of 2020.
28 Considering that both businesses were created in October of 2020, there was no diminution of
income from the house rental business, and Appellant testified to regularly dedicating 20 hours
per week to her craft business, COVID-19 did not severely limit her ability to perform customary
work activities. While Appellant argues that COVID-19 limited her ability to sell product because
community events were cancelled and "people were too broke to buy necklaces," Appellant's
arguments are not persuasive. Notably, the loss of potential sales or loss of opportunity for a new

1 business venture is not analogous to “COVID-19 severely limiting a claimant’s ability to perform
2 work activities.”

3 Second, with respect to Appellant’s weekly certification, there is no showing that Appellant’s
4 business or place of employment was closed. When asked to clarify why she certified under this
5 category, Appellant indicated that it was because community events where she planned to sell her
6 products were cancelled. The cancellation of events is not analogous to closure of businesses or
7 place of employment under in item (jj) listed above. In further reviewing Appellant’s
8 circumstances, Appellant’s house rental business was clearly open and operating considering the
9 regular income and Appellant’s arts and crafts business was open because she operated from
10 home. While Appellant argued her arts and craft business was closed because she was social
11 distancing and did not want to sell from her home, Appellant was not prevented from selling
12 outside her home, dropping off products at another locations, or delivering her products by mail.
13 Further, as Appellant testified, the loss of potential sales was not due to the fact that the place of
14 business was “closed” but rather due to the fact that no one was buying the cultural beads at the
15 time.

16 Third, after careful review, Appellant does not satisfy any other COVID-19 qualifying reason
17 listed above. Based on the applicable law and evidence provided, Appellant does not meet any of
18 the COVID-19 qualifying reasons. Accordingly, Appellant’s employment was not affected as a
19 direct result of COVID-19 and Appellant is not eligible to receive PUA or FPUC benefits.

20 **2. Appellant was overpaid and not entitled to a waiver.**

21 “Benefits shall be paid promptly in accordance with a determination, redetermination, or
22 decision or appeal.”²⁹ However, “[a]ny individual who has received any amount as benefits . . .
23 to which the individual was not entitled shall be liable for the amount unless the overpayment was
24 received without fault on the part of the recipient and its recovery would be against equity and
25 good conscience.”³⁰ Fault³¹ is defined as:

26 ²⁹ HRS § 383-43.

27 ³⁰ HRS § 383-44. Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments
28 to repay these amounts to the state agency. However, under UIPL 15-20, the state has authority to waive repayments
of FPUC if the payment was without fault on the part of the individual and such repayment would be contrary to
equity and good conscience. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES
Act and authorizes states to waive the repayment if the state determines that the payment of PUA was without fault
on the part of any such individual and such repayment would be contrary to equity and good conscience. This waiver
authority applies to overpayments that meet this criterion at any time since the PUA program began.

³¹ HRS 12-5-83.

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- (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an individual below the poverty line and taking away basic necessities to live. In evaluating equity and good conscience,³² the factors to consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant, as required ...
- (B) Hardship to the claimant that the repayment may impose; and
- (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.³³

Considering above, Appellant should not have been paid benefits under PUA or FPUC. Moreover, since Appellant does not contest the amount listed in the Notice of Overpayment and confirmed receiving the total sum of \$20,030 in PUA and FPUC benefits—it is clear that the overpayment occurred.

Here, Appellant’s argues that she is entitled to a waiver because the fault should be assigned to the Department for letting her claim fall through the cracks and letting her claim be paid out when there were problems with her application. Ultimately, Appellant’s argument is not persuasive. As stated above, Appellant certified and acknowledged that it is her responsibility to read the benefit handbook and must provide accurate and complete information. The undersigned recognizes that some fault is assignable to the Department for failure to institute the necessary controls in issuing paper checks and payment of claims. However, as described above, any fault of the Appellant restricts eligibility of a waiver.

Upon review of the evidence and testimony provided, Appellant is not entitled to a waiver because the overpayment was partially her fault. First, Appellant provided material statements on her initial application and weekly certifications that she knew or should have known to be incorrect. Specifically, she falsely certified that she was self-employed when her business was

³² *Id.*
³³ PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

1 not legitimately operating.³⁴ Based on the evidence presented, Appellant only applied for a
2 business license after the fact to legitimize her claim for unemployment benefits. Further,
3 Appellant made contradictory statements on her initial application when she certified the last date
4 she performed work was on “March 1, 2020” but in a separate statement said she “never worked”
5 and has no employment history. Also, Appellant falsely certified that her place of employment
6 was closed when she regularly worked 20 hours a week from her home. Second, Appellant failed
7 to furnish information that she knew or should have known to be material such as: (1)
8 circumstances surrounding her prior unemployment; (2) the failure to obtain a business license;
9 and (2) the reporting of said income received. Considering the contradictory, inaccurate, and
10 incomplete information provided in Appellant’s initial application or weekly certification, fault
11 must be assigned to Appellant. Accordingly, Appellant is not entitled to a waiver of repayment
12 of the overpayment.

12 VI. DECISION

13 For the reasons stated above, it is ORDERED that:

- 14 1. The CNMI Department of Labor’s Disqualifying Determination dated February 4, 2021,
15 is **AFFIRMED**;
- 16 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 1,
17 2020 to December 26, 2020;
- 18 3. The CNMI Department of Labor’s Notice of Overpayment dated February 1, 2021 is
19 **AFFIRMED**;
- 20 4. Appellant is not entitled to a waiver for repayment; and
- 21 5. Appellant is ordered to report to the Department’s Benefit Payment Control Unit to
22 submit to a reasonable payment plan, as determined by the Department’s Benefit
23 Payment Control Unit.

24 If a party is aggrieved by this Order and would like to contest the decision, he or she must
25 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
26 written request should be supported by legal, factual, or evidentiary reasons to reopen the
27 decision. The written request must be submitted to the Administrative Hearing Office, either in
28 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950) or via email at
hearing@dol.gov.mp.

³⁴ “*Before* engaging in a business in the Commonwealth, a person must file an application for business license”
NMIAC 70-40.1-101(a)(emphasis added).

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In the event a request to reopen the decision is granted, the matter shall be scheduled for a subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for judicial review will be as established by the applicable law and court rule.

So ordered this 22nd day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

1			
2			
3	In Re Matter of:	)	PUA Case No. 21-0059
4	Melevie C. Balaan,)	
5)	
6	Appellant,	)	ADMINISTRATIVE ORDER
7	v.)	
8	CNMI Department of Labor,)	
9	Division of Employment Services-PUA,)	
10	Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on March 09, 2021 at 1:30 p.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Melevie C. Balaan (“Appellant”) was present and was not represented by counsel. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Coordinator Audrey Castro. There were no other witnesses who provided testimony at the hearing. The following exhibits have been admitted onto the record:

- Exhibit 1: Disqualifying Determination dated October 27, 2020;
- Exhibit 2: Notice of Determination of PUA Overpayment dated February 08, 2021;
- Exhibit 3: Appellant’s Appeal Form dated February 12, 2021;
- Exhibit 4: Appellant’s Initial Application;
- Exhibit 5: Application Snapshot dated September 03, 2020;
- Exhibit 6: Application Snapshot dated September 15, 2020;
- Exhibit 7: Request for Separation Information dated July 27, 2020;
- Exhibit 8: Verification of Partial Unemployment Status dated July 27, 2020;
- Exhibit 10: Appellant’s Letter
- Exhibit 11: Copy of Appellant’s Driver’s License; and
- Exhibit 12: Copy of Appellant’s email to CNMI Labor dated October 24, 2020.

1 For the reasons stated below, the Department's Determination dated October 27, 2020 is
2 **AFFIRMED**. Claimant is not eligible for benefits for the period of March 01, 2020 to December
3 26, 2020.

4 II. JURISDICTION

5 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
6 2020 was signed into law creating new temporary federal programs for unemployment benefits
7 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
8 Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed
9 Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said
10 federal unemployment insurance programs, which, among other things, extended the PUA and
11 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
12 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is
13 charged with the responsibility in administering the above-mentioned programs in the CNMI in
14 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
15 has been designated to preside over appeals of agency decisions.

16 III. PROCEDURAL HISTORY & ISSUE

17 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
18 review of Appellant's application and supporting documents, the Department issued its
19 determination on October 20, 2020. The Department's determination found the Appellant was
20 ineligible to receive benefits from March 01, 2020 to December 26, 2020. On February 08, 2021,
21 the Department issued a Notice of Overpayment. The Department initially determined that
22 Appellant was overpaid a total of \$3,795 in PUA benefits for the weeks of August 08, 2020 to
23 October 17, 2020. The Department subsequently clarified that the total amount of overpayment
24 was \$3,410.

25
26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 Appellant filed his initial appeal on October 24, 2020 and filed the overpayment appeal on
2 February 12, 2021. The issues on appeal are 1) whether the present appeal is timely; 2) whether
3 Appellant is eligible for Pandemic Unemployment Assistance and 3) whether there are any
4 overpayments necessitating the return of PUA funds in this case.

5 IV. FINDINGS OF FACT

6 In consideration of the evidence provided and credibility of witness testimony, the
undersigned issues the following findings of fact:

- 7 1. Prior to the pandemic, Appellant, a U.S. citizen, was employed as a Cashier at the Lucky
8 II Mart (“Employer”) in Sinapalo, Rota. Appellant regularly worked 40 hours per week at
9 \$580 every two weeks. Appellant began working at Employer on March 31, 2019 and his
10 last date of employment was on March 06, 2020.⁵
- 11 2. On March 06, 2020, Appellant voluntarily resigned from Employer to take care of his
12 mother who was medically referred to Saipan.⁶
- 13 3. On or around May 26, 2020, Appellant was asked by Employer to return to work but was
14 not able and available to work because he was still caring for his mother in Saipan.⁷
- 15 4. Appellant returned to Rota on July 10, 2020,⁸ but did not return to work at Employer as
16 Employer already filled Appellant’s position.⁹
- 17 5. On September 03, 2020, Appellant filed an online application to claim unemployment
18 benefits under PUA and FPUC programs. In the application Appellant incorrectly certified
19 that he was unable to reach his job because he was advised by a health care provider to
20 self-quarantine due to concerns related to COVID-19.¹⁰
- 21 6. On September 15, 2020, Appellant filed his second online application to claim
22 unemployment benefits under PUA and FPUC programs. In the application Appellant
23 certified that his unemployment was a result of his being terminated from his employment
24 at Lucky II Mart.¹¹

25
26 ⁵ Exhibit 5.

27 ⁶ Exhibit 7.

28 ⁷ Exhibit 10.

⁸ Exhibit 10.

⁹ Testimony of PUA Coordinator Castro.

¹⁰ Testimony of Appellant.

¹¹ Exhibit 6.

- 1 7. On October 20, 2020, (mailed dated October 27, 2020) the Department disqualified
2 Appellant from receiving PUA benefits effective March 01, 2020 to December 26, 2020,
3 because he did not meet the minimum qualifications required under the CARES Act for
4 Pandemic Unemployment Assistance. Specifically, Appellant failed to provide his
5 certification of employment.¹²
- 6 8. On October 24, 2020, Appellant filed his initial appeal via email. On October 28, 2020,
7 PUA Coordinator Vertilia Camacho responded to Appellant stating that she would
8 forward his appeal request to the Administrative Hearing Office. The Administrative
9 Hearing Office set the hearing on Appellant's appeal on February 16, 2021.
- 10 9. On February 08, 2021, the Department issued a Notice of Overpayment. The Department
11 initially determined that Appellant was overpaid a total of \$3,795 in PUA benefits for the
12 weeks of August 08, 2020 to October 17, 2020.¹³ The Department subsequently clarified
13 that the total amount of overpayment was \$3,410.
- 14 10. On February 12, 2021, Appellant appealed the February 08, 2020 Notice of Overpayment
15 stating that the Department did not advise him not to spend the PUA benefits that were
16 deposited to his account.
- 17 11. Appellant is single, is currently unemployed and lives with his parents. There are four
18 people in his household: mother, father, Appellant and a sibling. The only breadwinner in
19 the household is Appellant's father who earns a gross monthly income of \$1,100.

18 V. CONCLUSIONS OF LAW

19 In consideration of the above-stated findings and applicable law, the undersigned issues the
20 following conclusions of law:

21 1. Appellant did file a timely appeal.

22 Generally, an appeal should be filed within ten days after the Notice of Determination was
23 issued or served to the claimant. However, the Department may extend the period to thirty
24 days, by a showing of good cause.¹⁴ Good cause means: (1) illness or disability; (2) keeping an
25 appointment for a job interview; (3) attending a funeral of a family member; and (4) any other
26 reason which would prevent a reasonable person from complying as directed.¹⁵

27 _____
¹² Exhibit 1.

28 ¹³ Exhibit 2.

¹⁴ HI. Rev. Statute § 383-38(a).

¹⁵ HAR § 12-5-81(j).

1 Here, Appellant received the disqualifying determination on October 20, 2020, via the online
2 portal. Appellant then emailed his appeal request to the Department on October 24, 2020. On
3 October 28, 2020, PUA Coordinator Vertilia Camacho responded via email to Appellant stating
4 that she would forward his appeal request to the Administrative Hearing Office. Appellant filed
5 a subsequent appeal on February 12, 2021, appealing his February 08, 2021 notice of
6 overpayment. The Administrative Hearing Office set the hearing for Appellant's October 24,
7 2020 appeal and February 12, 2021 overpayment appeal on February 16, 2021. Because
8 Appellant filed his appeals within the ten days of receiving notice of his October 20, 2020
9 determination and within ten days of receiving his February 08, 2020 notice of overpayment,
10 Appellant's appeals of the initial determination and notice of overpayment were timely filed.

11 **2. Appellant's employment was not affected as a direct result of COVID-19.**

12 Pursuant to Section 2102 of the CARES Act of 2020, Public Law 116-136, there are a
13 number of requirements to meet the eligibility standard of PUA. First, the claimant cannot be
14 qualified for regular unemployment, extended benefits under state or federal law, or pandemic
15 emergency unemployment compensation (PEUC).¹⁶ Second, the claimant must show that he or
16 she is able and available for work, as defined by Hawaii law, except they are unemployed,
17 partially unemployed, or unable to work or unable for work due to at least one of the following
18 COVID-19 reasons identified in Section 2102 (a)(3)(A)(ii)(I) of the CARES Act:

- 19 (a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of
20 COVID-19 and is seeking a medical diagnosis;
- 21 (b) A member of the individual's household has been diagnosed with COVID-19;
- 22 (c) The individual is providing care for a family member or a member of the individual's
23 household who has been diagnosed with COVID-19;
- 24 (d) A child or other person in the household for which the individual has primary
25 caregiving responsibility is unable to attend school or another facility that is closed as
26 a direct result of the COVID-19 public health emergency and such school or facility
27 care is required for the individual to work;
- 28 (e) The individual is unable to reach the place of employment because of a quarantine
imposed as a direct result of the COVID-19 public health emergency;

¹⁶ This was not at issue in this matter.

- 1 (f) The individual is unable to reach the place of employment because the individual has
2 been advised by a health care provider to quarantine due to concerns related to
3 COVID-19;
4 (g) The individual was scheduled to commence employment and does not have a job or is
5 unable to reach the job as a direct result of the COVID-19 public health emergency;
6 (h) The individual has become the breadwinner or major support for a household because
7 the head of the household has died as a direct result of COVID-19;
8 (i) The individual has to quit his or her job as a direct result of COVID-19;
9 (j) The individual's place of employment is closed as a direct result of the COVID-19
10 public health emergency; or
11 (k) The individual meets any additional criteria established by the US Secretary of Labor
12 for unemployment assistance under PUA.

13 Additional criteria established by the US Secretary of Labor under item (k)¹⁷, above, includes:

- 14 (1) The individual is an independent contractor who is unemployed
15 (total or partial) or is unable or unavailable to work because of the
16 COVID-19 public health emergency has severely limited his or
17 her ability to continue performing the customary job;
18 (2) The individual has been denied continued unemployment benefits
19 because the individual refused to return to work or accept an offer
20 of work at a worksite that, in either instance, is not in compliance
21 with local, state, or national health and safety standards directly
22 related to COVID-19. This includes, but is not limited to, those
23 related to facial mask wearing, physical distancing measures, or
24 the provision of personal protective equipment consistent with
25 public health guidelines;
26 (3) An individual provides services to an educational institution or
27 educational service agency and the individual is unemployed or
28 partially unemployed because of volatility in the work schedule
that is directly caused by the COVID-19 public health emergency.
This includes, but is not limited to, changes in schedules and
partial closures; and
(4) An individual is an employee and their hours have been reduced
or the individual was laid off as a direct result of the COVID-19
public health emergency.

Based on the testimony and evidence presented, Appellant's employment was not affected as a direct result of the COVID-19 public health emergency. Here, Appellant voluntarily quit his job and relocated to Saipan to care for his mother, who was under medical referral. Appellant was not

¹⁷ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 terminated or furloughed by Employer as a result of COVID-19 pandemic. Moreover, even
2 though Appellant resigned from his employment on March 06, 2020, Employer attempted to
3 rehire Appellant on May 26, 2020. However, Appellant was still not able and available to work
4 for Employer. By the time Appellant returned to Rota on July 10, 2020, his position was already
5 filled by another person. Accordingly, Appellant's employment was not affected as a direct result
6 of the COVID-19 public health emergency.

7 **3. An overpayment occurred and Appellant is required to pay the amount back.**

8 "Benefits shall be paid promptly in accordance with a determination, redetermination, or
9 decision or appeal."¹⁸ However, "[a]ny individual who has received any amount as benefits . . .
10 to which the individual was not entitled shall be liable for the amount unless the overpayment was
11 received without fault on the part of the recipient and its recovery would be against equity and
12 good conscience."¹⁹ Fault²⁰ is defined as:

- 13 (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- 14 (B) Failure to furnish information which the individual knew or should have known to be material; or
- 15 (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

16
17 Based on federal guidance, "contrary to equity and good conscience" is tantamount to placing an
18 individual below the poverty line and taking away basic necessities to live. In evaluating equity
19 and good conscience,²¹ the factors to consider include, but are not limited to:

- 20 (A) Whether notice of a redetermination was given to the claimant, as required . . .
- 21 (B) Hardship to the claimant that the repayment may impose; and
- 22 (C) The effect, if any, that the repayment will have upon the fulfillment of the objectives of the program.²²

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25 ¹⁸ HRS § 383-43.

26 ¹⁹ HRS § 383-44.

27 ²⁰ HRS 12-5-83.

28 ²¹ *Id.*

²² PUA benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis amidst a pandemic. PUA is not an excuse to refuse suitable work. PUA is not free or unencumbered money. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the program and availability of funds for eligible or qualified individuals.

1 Considering that Appellant's employment was not directly affected by the COVID-19
2 pandemic, the \$3,410 in PUA benefits received by Appellant is an overpayment. The undersigned
3 finds that the overpayment was Appellant's fault. First, Appellant provided statements that he
4 should have known to be incorrect. Specifically, he incorrectly stated in his online application
5 that he was unable to reach his job because he was advised by a health care provider to self-
6 quarantine due to concerns related to COVID-19. Moreover, Appellant stated in his second online
7 application that his unemployment was a result of his being terminated from his employment at
8 Lucky II Mart, when Appellant voluntarily resigned from his employment at Lucky II Mart.
Accordingly, the undersigned finds that the overpayment was Appellant's fault.

9 The undersigned notes that repayment by Appellant would be contrary to equity and good
10 conscience. First, Appellant is unemployed and has no source of income. Appellant currently
11 lives with his parents and a sibling. Secondly, the only income earner in his household is his father
12 who earns a gross of \$1,100 per month or \$13,200 per year for a household of four.

13 Nonetheless, since the overpayment was Appellant's fault, he is not eligible for a waiver.

14 **VI. ORDER**

15 For the reasons stated above, it is ORDERED that:

- 16 1. The CNMI Department of Labor's Determination is **AFFIRMED**;
- 17 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 01,
18 2020 to December 26, 2020.
- 19 3. Appellant shall promptly submit to a repayment plan with the Benefit Payment Control
20 Unit. Appellant shall pay monthly installments of, at least, \$50.00 by the first of each
21 month, beginning June 01, 2021, until the entire overpayment is completely paid;
- 22 4. The CNMI Department of Labor Benefit Payment Control Unit shall notify the CNMI
23 Department of Finance of this overpayment in federal funds. Where possible, BPC shall
24 collect any of Appellant's tax rebates, tax refunds, stimulus checks, or other federal funds
25 to satisfy this debt.

26 If a party is aggrieved by this Order and would like to contest the decision, he or she must
27 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
28 written request should be supported by legal, factual, or evidentiary reasons to reopen the
decision. The written request must be submitted to the Administrative Hearing Office, either in

1 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
2 hearing@dol.gov.mp.

3
4 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
5 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
6 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
7 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
8 filings fees, and filing deadlines for judicial review will be as established by the applicable law
9 and court rule.

10 So ordered this 15th day of April, 2021.

11 */s/*

12 **JOEY P. SAN NICOLAS**
13 *Pro Tem* Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0069
)	
Jorale James A. Mendoza,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on April 6, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 6, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 22nd day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0070
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Marion D. Salinas,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant's appeal of the Department's PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on April 7, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 7, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 22nd day of March, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
2 DEPARTMENT OF LABOR
3 ADMINISTRATIVE HEARING OFFICE

4	In Re Matter of:	)	PUA Case No. 21-0072
5	Xiaoying Z. Jaworski,)	
6	Appellant,	)	ADMINISTRATIVE ORDER
7	v.)	
8	CNMI Department of Labor,)	
9	Division of Employment Services-PUA,)	
10	Appellee.)	

11
12 Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated
13 February 18, 2021, this matter was scheduled for an Administrative Hearing on April 13, 2021 at
14 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the
15 Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued
16 in error and should be disregarded. The Department confirmed that the Disqualifying
17 Determination was retracted and the claim the currently undergoing review.

18 In consideration of above, the undersigned finds that this matter is not ripe for an appeal and
19 dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative
20 Hearing scheduled for April 13, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant
21 disagrees with a subsequent determination or notice, Appellant may file a new appeal.

22 So ordered this 22nd day of March, 2021.

23 /s/
24 **JACQUELINE A. NICOLAS**
25 Administrative Hearing Officer
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1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
2 DEPARTMENT OF LABOR
3 ADMINISTRATIVE HEARING OFFICE

4	In Re Matter of:	)	PUA Case No. 21-0074
5	Eduardo O. Flores,)	
6	Appellant,	)	ADMINISTRATIVE ORDER
7	v.)	
8	CNMI Department of Labor,)	
9	Division of Employment Services-PUA,)	
10	Appellee.)	

11
12 Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated
13 February 18, 2021, this matter was scheduled for an Administrative Hearing on April 15, 2021 at
14 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the
15 Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued
16 in error and should be disregarded. The Department confirmed that the Disqualifying
17 Determination was retracted and the claim the currently undergoing review.

18 In consideration of above, the undersigned finds that this matter is not ripe for an appeal and
19 dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative
20 Hearing scheduled for April 15, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant
21 disagrees with a subsequent determination or notice, Appellant may file a new appeal.

22 So ordered this 23rd day of March, 2021.

23 /s/
24 **JACQUELINE A. NICOLAS**
25 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0077
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Manzurul Alam,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated February 15, 2021, this matter was scheduled for an Administrative Hearing on April 22, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 22, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 23rd day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0078
)	
Angelina B. Quinata,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated February 29, 2021, this matter was scheduled for an Administrative Hearing on April 27, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for April 27, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **23rd** day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
2 DEPARTMENT OF LABOR
3 ADMINISTRATIVE HEARING OFFICE

3 In Re Matter of:) PUA Case No. 21-0080
4 Frances Babauta,)
5)
6 Appellant,) ADMINISTRATIVE ORDER
7 v.)
8 CNMI Department of Labor,)
9 Division of Employment Services-PUA,)
10 Appellee.)

11
12 Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated
13 February 22, 2021, this matter was scheduled for an Administrative Hearing on April 29, 2021 at
14 9:00 a.m. before the undersigned. Subsequently, Appellant filed a written request to cancel or
15 withdraw said Appeal because the Disqualifying Determination was issued in error and should be
16 disregarded. The Department confirmed that the Disqualifying Determination was retracted and
17 the claim the currently undergoing review.

18 In consideration of above, the undersigned finds that this matter is not ripe for an appeal and
19 dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative
20 Hearing scheduled for April 29, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant
21 disagrees with a subsequent determination or notice, Appellant may file a new appeal.

22 So ordered this 23rd day of March, 2021.

23 /s/
24 **JACQUELINE A. NICOLAS**
25 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0081
)	
Antonio N. Alegre,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on May 4, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 4, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 25th day of March, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



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In Re Matter of:)	PUA Case No. 21-0082
)	
Victoria De Leon,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on May 5, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 5, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 25th day of March, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0085
)
John M. Ortiguerra,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on May 12, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim the currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 12, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this 25th day of March, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



1 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
2 DEPARTMENT OF LABOR
3 ADMINISTRATIVE HEARING OFFICE

3	In Re Matter of:	)	PUA Case No. 21-0086
4	Rhenmer C. Remillosa,)	
5)	
6	Appellant,	)	ADMINISTRATIVE ORDER
7	v.)	
8	CNMI Department of Labor,)	
9	Division of Employment Services-PUA,)	
10	Appellee.)	

11
12 Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated
13 February 18, 2021, this matter was scheduled for an Administrative Hearing on May 13, 2021 at
14 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the
15 Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued
16 in error and should be disregarded. The Department confirmed that the Disqualifying
17 Determination was retracted and the claim the currently undergoing review.

18 In consideration of above, the undersigned finds that this matter is not ripe for an appeal and
19 dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative
20 Hearing scheduled for May 13, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant
21 disagrees with a subsequent determination or notice, Appellant may file a new appeal.

22 So ordered this **25th** day of March, 2021.

23 /s/
24 **JACQUELINE A. NICOLAS**
25 Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 21-0087
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Daisy Pearl P. Panhilason,)
)
Appellant,) ADMINISTRATIVE ORDER
)
v.)
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

Pursuant to Appellant’s appeal of the Department’s PUA Disqualifying Determination, dated February 18, 2021, this matter was scheduled for an Administrative Hearing on May 18, 2021 at 9:00 a.m. before the undersigned. Subsequently, the Department filed a Motion to Dismiss the Appeal, explaining that the Disqualifying Determination that is the basis of this appeal was issued in error and should be disregarded. The Department confirmed that the Disqualifying Determination was retracted and the claim is currently undergoing review.

In consideration of above, the undersigned finds that this matter is not ripe for an appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for May 18, 2021 at 9:00 a.m. is **VACATED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **26th** day of March, 2021.

/s/

JACQUELINE A. NICOLAS
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

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In Re Matter of:)	PUA Case No. 21-0092
)	
Glenn S. Arriola,)	
)	
Appellant,)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

This matter came before the undersigned for an Administrative Hearing on April 8, 2021 at 9:00 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Glenn S. Arriola (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by Labor Certification Worker Dennis Cabrera and PUA Coordinator Brenda Rideb. There were no other witnesses who gave testimony at the hearing.

During the Administrative Hearing, the Department indicated that the Disqualifying Determination that is the basis of this appeal was issued in error and subsequently retracted. The Department moved to dismiss the case as it is still reviewing the Appellant’s claim and will issue a new determination. Appellant did not contest its dismissal.

In consideration of above, the undersigned finds that there are no issues for a hearing and this matter is not ripe for appeal. Accordingly, this appeal is hereby **DISMISSED**. In the event that the Appellant disagrees with a subsequent determination or notice, Appellant may file a new appeal.

So ordered this **8th** day of April, 2021.

/s/
JACQUELINE A. NICOLAS
Administrative Hearing Officer



**COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE**

In Re Matter of:	)	PUA Case No. 21-0106
)	
Roslyn T. Deleon Guerrero,)	
)	
Appellant,	)	ADMINISTRATIVE ORDER
)	
v.)	
)	
CNMI Department of Labor,)	
Division of Employment Services-PUA,)	
)	
Appellee.)	

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on April 19, 2021 at 10:30 a.m. at the Administrative Hearing Office. Due to the ongoing COVID-19 public health emergency, the hearing was held telephonically. Appellant Roslyn T. Deleon Guerrero (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Benefit Payment Control Unit Supervisor Sharon Palacios, PUA Coordinator Rikki Camacho, and PUA Coordinator Vertilia Camacho.

Exhibits:

1. Exhibit 1: Copy of Appellant’s Application Snapshot (filed June 17, 2020);
2. Exhibit 2: Copy of Appellant’s Weekly Certifications (for May 31 to June 6, 2020 and December 6 to 12, 2020);
3. Exhibit 3: Copy of the Department’s Disqualifying Determination (dated March 26, 2021);
4. Exhibit 4: Copy of Department’s Notice of Overpayment (dated April 14, 2021);
5. Exhibit 5: Copy of Appellant’s Appeal Form (filed April 13, 2021);
6. Exhibit 6: Copy of the Notice of Hearing (issued April 13, 2021); and
7. Exhibit 7: Copy of Appellant’s Letters (dated March 30 and March 31, 2021).

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1 For the reasons stated below, the Department's Determination dated March 26, 2021 is
2 **AFFIRMED**. Claimant is not eligible for benefits for the period of March 29, 2020 to September
3 4, 2021. The CNMI Department of Labor's Notice of Overpayment, dated April 14, 2021, is
4 **AFFIRMED**. Appellant was overpaid in the total amount of \$20,205 in PUA and FPUC benefits
5 and is liable to repay the entire amount.

6 II. JURISDICTION

7 On March 27, 2020, the Coronavirus Aid Relief and Economic Security ("CARES") Act of
8 2020 was signed into law creating new temporary federal programs for unemployment benefits
9 called Pandemic Unemployment Assistance ("PUA")¹ and Federal Pandemic Unemployment
10 Compensation ("FPUC").² On December 27, 2020, the Continued Assistance for Unemployed
11 Workers Act of 2020 ("Continued Assistance Act") amended and created new provisions of said
12 federal unemployment insurance programs, which, among other things, extended the PUA and
13 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
14 ("ARPA") extended the programs to September 6, 2021. The CNMI Department of Labor is
15 charged with the responsibility in administering the above-mentioned programs in the CNMI in
16 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
17 has been designated to preside over appeals of agency decisions.

18 Upon review of the records, the appeal was timely filed. Accordingly, jurisdiction is
19 established.

20 III. PROCEDURAL HISTORY & ISSUES

21 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
22 review of Appellant's application and supporting documents, the Department issued a
23 Disqualifying Determination on March 26, 2021. On April 13, 2021, Appellant filed a request to
24 appeal the determination. Subsequently, on April 14, 2021, the Department issued a Notice of
25 Determination of PUA Overpayment (i.e., Overpayment Notice) for the total amount of \$20,205

26 ¹ See Section 2102 of the CARES Act of 2020, Public Law 116-136.

27 ² See Section 2104 of the CARES Act of 2020, Public Law 116-136.

28 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A ("Continued Assistance for Unemployed Workers Act of 2020" or "Continued Assistance Act").

⁴ Pursuant to Section 2102(h) of the CARES Act of 2020 (Pub. L. 116-136) and 20 CFR § 625.2(r)(1)(ii), the CNMI Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

1 in both PUA and FPUC benefits. As stated in the Notice of Hearing, the issues on appeal are: (1)
2 whether the appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an
3 overpayment occurred and funds should be returned.

4 IV. FINDINGS OF FACT

5 In consideration of the evidence provided and credibility of witness testimony, the
6 undersigned issues the following findings of fact:

- 7 1. Appellant does not have a recent attachment to the CNMI work force and her
8 unemployment predates the pandemic. Specifically, in 2012, Appellant chose to leave the
9 work force to address health issues. Subsequently, in 2015, Appellant became the
10 caretaker for her elderly parents. In 2020, Appellant declined to work at the family
11 business to prioritize her care taking responsibilities.
- 12 2. On June 17, 2020, Appellant filed an online application to claim PUA and FPUC benefits.⁵
13 On the initial application, Appellant certified under penalty of perjury that her
14 employment was affected as a direct result of COVID-19, as of March 31, 2020.⁶
15 Appellant indicated that she is her mother's caretaker and, due to the economic impact of
16 COVID-19, her mother has been unable to pay her usual \$500 allowance per month.⁷
- 17 3. On the initial application, Appellant further certified that: (1) she is not looking for work;
18 (2) she cannot accept work due to family responsibilities; and (3) she is not self-employed.
- 19 4. Subsequently, Appellant submitted weekly certifications to claim continued benefits from
20 week ending April 4, 2020 to December 26, 2020. In each weekly application, Appellant
21 misrepresented: (1) she is able and available to work; (2) she is still unemployed as a direct
22 result of the COVID-19 public health emergency; and (3) that her employment was
23 affected by the COVID-19 public health emergency because she is the primary caregiver
24 of a child or other person in her household who is unable to attend school or another
25 facility that is closed as a direct result of the COVID-19 public health emergency and such
26 school or facility is required for her to work.
 - 27 a. Appellant was not able and available to work due to her caregiving responsibilities.

27 ⁵ Exhibit 1.

28 ⁶ When asked how her employment was affected on March 31, 2020, Appellant indicated this is the last day she
received an allowance from her mother.

⁷ Exhibit 7.

- 1 b. Appellant was not able and available to work when she was off island. Appellant
2 was off island, for reasons unrelated to COVID-19, from June 29, 2020 to July 8,
3 2020.
- 4 c. Appellant was not unemployed as a direct result of COVID-19 when her
5 unemployment predated the pandemic.
- 6 d. With respect to COVID-19 qualifying reason, Appellant explained that she was
7 the primary caregiver of her mother and she had to care for her niece who was
8 unable to attend school due to COVID-19. However, Appellant admits that she is
9 not the primary caregiver of said niece and that the school's closure was not the
10 reason why she did not work. Appellant further admits, her mother does not attend
11 a facility which was closed as a direct result of COVID-19 and prevents her from
12 working.
- 13 5. It is the Appellant's responsibility to read the published Benefit Rights Information
14 Handbook. It is Appellant's responsibility to provide true, accurate, and complete
15 information in her application and weekly certifications.⁸
- 16 6. Due to the representations provided in the initial application and weekly certification,
17 Appellant's claim was paid out by the online portal.
- 18 7. On October 23, 2020, Department staff flagged Appellant's claim and referred it to the
19 Department's Benefit Payment Control Unit for a targeted audit. By flagging the claim,
20 further payouts were prevented. However, due to the backlog of hundreds of overpayment
21 cases, the BPC was unable to complete the audit findings until March 2021.
- 22 8. On March 26, 2021, the Department disqualified Appellant from receiving PUA benefits
23 from March 29, 2020 to September 4, 2021.⁹ The Determination stated that the Appellant
24 was not qualified to receive PUA because her unemployment did not meet the
25 qualifications required by the CARES Act.
- 26 9. On April 14, 2021, the Department issued a Notice of Overpayment.¹⁰ There it finds that
27 Appellant was overpaid in the total amount of \$10,005 in PUA benefits and \$10,200 in

28 ⁸ See Exhibit 1.

⁹ Exhibit 3.

¹⁰ Exhibit 4.

1 FPUC benefits for the weeks ending April 4, 2020 to December 26, 2020. Appellant does
2 not contest receiving the amount listed in the Notice of Overpayment.

- 3 a. On August 12, 2020, Appellant received a paper check for \$16,755 for weeks
4 ending April 4, 2020 to August 8, 2020.
- 5 b. On September 8, 2020, Appellant received a paper check for \$1,380 for weeks
6 ending August 15, 2020 to September 5, 2020.
- 7 c. On September 15, 2020, Appellant received a paper check for \$345 for week
8 ending September 12, 2020.
- 9 d. On September 22, 2020 Appellant received a paper check for \$345 for week
10 ending September 19, 2020.
- 11 e. On October 1, 2020, Appellant received a paper check for \$345 for week ending
12 September 26, 2020.
- 13 f. On October 7, 2020, Appellant received a paper check for \$345 for week ending
14 October 3, 2020.
- 15 g. On October 13, 2020, Appellant received a paper check for \$345 for week ending
16 October 10, 2020.
- 17 h. On October 20, 2020, Appellant received a paper check for \$345 for week ending
18 October 17, 2020.

19 10. On April 1, 2021, Appellant filed her appeal at the wrong building. On April 13, 2021,
20 Appellant submitted her Appeal to the Administrative Hearing Office, eight days after the
21 appeal deadline to file an appeal.¹¹

22 11. Appellant testified that she used all the money she was given by PUA and FPUC.
23 Specifically, Appellant sent some money to her family and used the rest to buy groceries,
24 pay arrearages, and other things.

25 12. Appellant testified she is unable to repay the overpayment. Specifically, Appellant states
26 that she has no source of income and her husband is unemployed. Appellant adds that she
27 currently receives public assistance and cannot regularly pay her cell phone or internet
28 bill. Appellant states that her mother pays for all other necessities.

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¹¹ Exhibit 5.

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant's appeal is timely filed.

Generally, an appeal should be filed within ten days after the Notice of Determination was issued or served to the claimant. However, the Department may extend the period to thirty days by a showing of good cause.¹² Good cause means: (1) illness or disability; (2) keeping an appointment for a job interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent a reasonable person from complying as directed.¹³

Here, the Determination included instructions to file an appeal with the Administrative Hearing Office by April 5, 2021. Notably, instructions to file an appeal are included in the Benefit Rights Information Handbook,¹⁴ the Notice of Overpayment,¹⁵ the Appeal Form,¹⁶ and various DOL publications and press releases.¹⁷ Appellant did not file her appeal in accordance with the instructions provided. On April 1, 2021, due to a misunderstanding of the instructions, Appellant filed her appeal at the wrong building. Appellant did not file her appeal with the Administrative Hearing Office until April 13, 2021, eight days after the deadline.

As a preliminary note, the failure to read instructions and follow directions does not amount to good cause to extend deadlines. However, the undersigned recognizes that Appellant was unrepresented by counsel and overly stressed by the unfamiliar legal procedures and legal terms. Considering Appellant's diligence in filing her Appeal before the deadline, albeit at the wrong location, the undersigned finds good cause to extend the filing deadline to 30 days. Accordingly, Appellant's appeal is timely filed.

2. Appellant's employment was not affected as a direct result of COVID-19.

In accordance with the CARES Act, the Continued Assistance Act, and the American Rescue Plan Act, payment of PUA and FPUC benefits are available to "covered individuals." A "covered individual" is someone who: (1) is not eligible for regular compensation or extended benefits under

¹² HI. Rev. Statute § 383-38(a).

¹³ HAR § 12-5-81(j).

¹⁴ In the initial application, Appellant certified that she understood it was her responsibility to read and understand the contents in the Benefit Rights Information Handbook.

¹⁵ Exhibit 4.

¹⁶ Exhibit 5.

¹⁷ See www.marianaslabor.net

1 State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the
2 CARES Act, including an individual who has exhausted all rights to regular unemployment or
3 extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation
4 under Section 2107;¹⁸ (2) self-certifies¹⁹ that the individual is unemployed, partially unemployed, or
5 unable or unavailable to work²⁰ as a direct result²¹ of a listed COVID-19 reason in Section
6 2102(a)(3)(A)(ii) of the CARES Act, and (3) provides required documentation of employment/self-
employment within the applicable period of time.²²

7 With respect to condition (2) listed above, Section 2102 (a)(3)(A)(ii)(I) of the CARES Act
8 specifically identifies the COVID-19 qualifying reasons²³ as:

- 9 (aa) The individual has been diagnosed with COVID-19 or is
10 experiencing symptoms of COVID-19 and is seeking a medical
11 diagnosis;
- 12 (bb) A member of the individual's household has been diagnosed with
13 COVID-19;
- 14 (cc) The individual is providing care for a family member or a member
15 of the individual's household who has been diagnosed with
16 COVID-19;
- 17 (dd) A child or other person in the household for which the individual
18 has primary caregiving responsibility is unable to attend school or
19 another facility that is closed as a direct result of the COVID-19
20 public health emergency and such school or facility care is
21 required for the individual to work;
- 22 (ee) The individual is unable to reach the place of employment because
23 of a quarantine imposed as a direct result of the COVID-19 public
24 health emergency;
- 25 (ff) The individual is unable to reach the place of employment because
26 the individual has been advised by a health care provider to
27 quarantine due to concerns related to COVID-19;

22 ¹⁸ This condition is generally not at issue with claimants in the CNMI because there are no other State or Federal
23 unemployment insurance programs in the CNMI.

24 ¹⁹ The PUA program utilizes initial and weekly applications where claimants self-certify and report under penalty of
25 perjury.

26 ²⁰ A claimant must be able to work and be available for work, as defined by Hawaii state law, in order to be eligible
27 for benefits. *See* HAR § 12-5-35.

28 ²¹ Pursuant to 20 CFR § 625.5, unemployment is considered a "direct result" of the pandemic where the employment
is an immediate result of the COVID-19 public health emergency itself, and not the result of a longer chain of events
precipitated or exacerbated by the pandemic.

²² Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating
employment or self-employment, or the planned commencement of employment or self-employment, if he or she
files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31,
2021 and receives PUA benefits on or after December 27, 2020.

²³ These reasons are further defined or illustrated in UIPL 16-20, Change 4.

- 1 (gg) The individual was scheduled to commence employment and does
2 not have a job or is unable to reach the job as a direct result of the
3 COVID-19 public health emergency;
4 (hh) The individual has become the breadwinner or major support for
5 a household because the head of the household has died as a direct
6 result of COVID-19;
7 (ii) The individual has to quit his or her job as a direct result of
8 COVID-19;
9 (jj) The individual's place of employment is closed as a direct result
10 of the COVID-19 public health emergency; or
11 (kk) The individual meets any additional criteria established by the US
12 Secretary of Labor for unemployment assistance under PUA.

13 Additional criteria established by the US Secretary of Labor under item (kk)²⁴, above, includes:

- 14 (1) The individual is an independent contractor who is unemployed
15 (total or partial) or is unable or unavailable to work because of the
16 COVID-19 public health emergency has severely limited his or
17 her ability to continue performing the customary job;
18 (2) The individual has been denied continued unemployment benefits
19 because the individual refused to return to work or accept an offer
20 of work at a worksite that, in either instance, is not in compliance
21 with local, state, or national health and safety standards directly
22 related to COVID-19. This includes, but is not limited to, those
23 related to facial mask wearing, physical distancing measures, or
24 the provision of personal protective equipment consistent with
25 public health guidelines;
26 (3) An individual provides services to an educational institution or
27 educational service agency and the individual is unemployed or
28 partially unemployed because of volatility in the work schedule
that is directly caused by the COVID-19 public health emergency.
This includes, but is not limited to, changes in schedules and
partial closures; and
(4) An individual is an employee and their hours have been reduced
or the individual was laid off as a direct result of the COVID-19
public health emergency.

Here, Appellant submitted a claim for PUA and FPUC benefits self-certifying, under penalty of perjury, that her employment was affected as a direct result of COVID-19 because she is caring for her elderly mother who, due to the economic impact of COVID-19, stopped paying her an allowance of \$500 a month. Subsequently, Appellant submitted weekly certifications claiming that her employment was still affected as a direct result of COVID-19 because of item (dd)—i.e.,

²⁴ See Unemployment Insurance Program Letter 16-20 and 16-20, Change 5.

1 she is the primary caregiver of a child or other person in her household who is unable to attend
2 school or another facility that is closed as a direct result of the COVID-19 public health
3 emergency and such school or facility is required for her to work.

4 Here, there are a number of issues affecting Appellant's eligibility for the PUA and FPUC
5 program. First, Appellant's unemployment predated the pandemic. Specifically, Appellant
6 stopped working in 2012 to address a health issue. Then in 2015, Appellant became her parent's
7 caregiver and chose not to work. Considering that her unemployment began long before the
8 pandemic, COVID-19 could not logically have caused her unemployment. Second, Appellant's
9 work as her mother's caregiver does not satisfy any COVID-19 qualifying reason. While the
10 undersigned recognizes the tireless work involved in caring for an elderly parent, that work does
11 not necessarily equate to an employment relationship. This is further made evident by the fact
12 that: (1) Appellant did not have specialized training or a professional license to be a care taker;
13 (2) Appellant did not have a business license to engage in the business of caretaking; (3) Appellant
14 did not report the allowance from her mother as income from caretaking; (4) Appellant did not
15 pay taxes from the allowance received from caretaking; (5) Appellant does not hold herself out
16 to be self-employed as a caretaker; and (6) Appellant continued to act as her mother's caregiver
17 even without pay. Third, Appellant did not satisfy any of the other COVID-19 qualifying reasons,
18 as listed above. In reviewing each COVID-19 qualifying reason, Appellant responded in the
19 negative. Moreover, in reviewing the COVID-19 qualifying reason Appellant attested to in her
20 weekly certification, Appellant admitted and acknowledged that she did not meet the elements of
21 item (dd), listed above.

22 Based on the applicable law and evidence provided, Appellant does not meet any of the
23 COVID-19 qualifying reasons for the time frame in question. Accordingly, Appellant's
24 employment was not affected as a direct result of COVID-19 and Appellant is not eligible to
25 receive PUA or FPUC benefits.

26 **3. Appellant is not "able and available" to work.**

27 A claimant must be able to work and be available for work to be eligible for benefits. "An
28 individual shall be deemed able and available for work...if the individual is able and available for
suitable work during the customary work week of the individual's customary occupation which

1 falls within the week for which a claim is filed.”²⁵

2 “An individual shall be deemed *able* to work if the individual has the physical and mental ability
3 to perform the usual duties of the individual’s customary occupation or other work for which is
4 the individual is reasonably fitted by training and experience.”²⁶ “An individual shall be deemed
5 *available* for work only if the individual is ready and willing to accept employment for which the
6 individual is reasonably fitted by training and experience. The individual must intend and wish to
7 work, and there must be no undue restrictions either self-imposed or created by force of
8 circumstances which prevent the individual from accepting employment.”²⁷ If a claimant is not
9 physically able or available for work, he or she may be disqualified for PUA, unless the reason
10 he or she is unable or unavailable is directly related to a COVID-19 reason, such as illness and
orders to quarantine.

11 Aside from her time off-island, Appellant has a number of restrictions and obligations that
12 would prevent her from returning to work or accepting work. Specifically, in her initial
13 application, Appellant attested that she is not looking for work and could not accept work due to
14 family responsibilities. Further, in 2020, Appellant declined to work at the family business due to
15 her personal health issues, unrelated to COVID-19. Appellant further decided that she could not
16 work due to her caregiving responsibilities. Appellant stated that caregiving is all encompassing
17 and leaves her with little time for anything else. Appellant’s initial application and testimony
18 makes it very clear that she is not “able” and “available” to work within the meaning of the law.
19 Accordingly, Appellant does not meet the “able” and “available” requirements for unemployment
20 assistance.

21 **4. Appellant was overpaid and not entitled to a waiver.**

22 “Benefits shall be paid promptly in accordance with a determination, redetermination, or
23 decision or appeal.”²⁸ However, “[a]ny individual who has received any amount as benefits . . .
24 to which the individual was not entitled shall be liable for the amount unless the overpayment was
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27 ²⁵ HAR § 12-5-35(a)

28 ²⁶ HAR § 12-5-35(a)(1) (emphasis added).

²⁷ HAR § 12-5-35(a)(2) and (b) (emphasis added).

²⁸ HRS § 383-43.

1 received without fault on the part of the recipient and its recovery would be against equity and
2 good conscience.”²⁹ Fault³⁰ is defined as:

- 3 (A) A material statement made by the individual which the
4 individual knew or should have known to be incorrect; or
5 (B) Failure to furnish information which the individual knew or
6 should have known to be material; or
7 (C) Acceptance of a payment which the individual either knew or
8 reasonably could have been expected to know was incorrect.

9 Based on federal guidance, “contrary to equity and good conscience” is tantamount to placing an
10 individual below the poverty line and taking away basic necessities to live. In evaluating equity
11 and good conscience,³¹ the factors to consider include, but are not limited to:

- 12 (A) Whether notice of a redetermination was given to the claimant,
13 as required ...
14 (B) Hardship to the claimant that the repayment may impose; and
15 (C) The effect, if any, that the repayment will have upon the
16 fulfillment of the objectives of the program.³²

17 Considering the discussion above, Appellant was not eligible to receive unemployment
18 benefits and should not have been paid benefits under PUA or FPUC program. Moreover,
19 considering that Appellant does not contest the amount listed in the Notice of Overpayment and
20 confirmed receiving the total sum of \$20,205.00—it is clear that the overpayment occurred.

21 As a preliminary matter, it is important to note that this program heavily relies on a claimant’s
22 certifications and representations in the initial and weekly application when determining
23 eligibility. As provided in the initial and weekly certifications, it is the claimant’s responsibility

24 ²⁹ Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments to repay these
25 amounts to the state agency. However, the state has authority to waive repayments of FPUC if the payment was
26 without fault on the part of the individual and such repayment would be contrary to equity and good conscience.
27 Section 201(d) of the Continued Assistance Act amends the CARES Act to authorize states to waive PUA
28 overpayments if the state determines that the payment of PUA was without fault on the part of any such individual
and such repayment would be contrary to equity and good conscience. This waiver authority applies to overpayments
that meet this criterion at any time since the PUA program began. *See also* HRS § 383-44.

³⁰ HRS 12-5-83.

³¹ *Id.*

³² The unemployment benefits were designed to be a critical lifeline for qualifying individuals facing a financial crisis
amidst a pandemic. Issues of fraud and overpayments are of great consequence that jeopardizes the integrity of the
program and availability of funds for eligible or qualified individuals.

1 to read the Benefit Rights and Information Handbook and provide true, accurate, and complete
2 information.

3 Upon review, the undersigned finds that Appellant is not eligible for a waiver to repay the
4 PUA and FPUC benefits. The overpayment occurred, in part, as a result of Appellant's own fault
5 when she failed to read the Benefit Rights Information Handbook and failed to provide complete
6 and accurate information in the initial application and weekly certifications. On the initial
7 application, Appellant misrepresented that her employment was affected as a direct result of
8 COVID-19. Since Appellant's unemployment predated the pandemic, her unemployment could
9 not logically be the direct result of COVID-19. On her weekly certifications, Appellant
10 misrepresented: (1) she is able and available to work; (2) she is still unemployed as a direct result
11 of the COVID-19 public health emergency; and (3) that her employment was affected by the
12 COVID-19 public health emergency because she is the primary caregiver of a child or other
13 person in her household who is unable to attend school or another facility that is closed as a direct
14 result of the COVID-19 public health emergency and such school or facility is required for her to
15 work. However, Appellant's testimony demonstrates that the statements provided in the weekly
16 certifications are not true. Because of the misrepresentations made, the undersigned must assign
17 fault on the Appellant. Since some fault is assigned to Appellant, Appellant is not entitled to a
18 waiver of repaying the overpayment amount and Appellant is liable to repay the entire
19 overpayment of \$20,205.00.

18 VI. DECISION

19 For the reasons stated above, it is ORDERED that:

- 20 1. The CNMI Department of Labor's Disqualifying Determination, dated March 26, 2021,
21 is **AFFIRMED**;
- 22 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of March 29,
23 2020 to September 4, 2021.
- 24 3. The CNMI Department of Labor's Notice of Overpayment, dated April 14, 2021, is
25 **AFFIRMED**; and
- 26 4. Appellant was overpaid in the total amount of **\$20,205.00** and is not entitled to a waiver
27 for repayment. Appellant is ordered to immediately report to the CNMI Department of
28 Labor Benefit Payment Control Unit to enter into a reasonable payment plan of \$25.00 or
more a month, to be paid by the last day of each month, starting April 2021.

1 If a party is aggrieved by this Order and would like to contest the decision, he or she must
2 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
3 written request should be supported by legal, factual, or evidentiary reasons to reopen the
4 decision. The written request must be submitted to the Administrative Hearing Office, either in
5 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
6 hearing@dol.gov.mp.

7 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
8 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
9 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
10 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
11 filings fees, and filing deadlines for judicial review will be as established by the applicable law
12 and court rule.

13 So ordered this 20th day of April, 2021.

14 /s/

15 **JACQUELINE A. NICOLAS**
16 Administrative Hearing Officer
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COMMONWEALTH CASINO COMMISSION
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COMMISSION ORDER NO: 2021-002

Final Order for Enforcement Actions 20-001 (consolidated) and 20-003 (consolidated).

For good cause determined at the February 25, 2021 and March 02, 2021 evidentiary hearings of the Commonwealth Casino Commission, which were duly publicly noticed and open to the public, and based on the authority granted by the laws of the Commonwealth (including but not limited to Public Laws 18-56, 19-24 and 21-38) and the Regulations of the Commonwealth Casino Commission, NMIAC Chapter 175-10.1, the Commonwealth Casino Commission hereby finds and **ORDERS AS FOLLOWS:**

1. WHEREAS, On or about February 25, 2021 Vice Chairman Ralph S. Demapan presided over an evidentiary hearing of the Commission in Enforcement Action 2020-001 (consolidated). The consolidated enforcement action encompassed actions 2020-001 and 2020-002; and
2. WHEREAS, On or about March 02, 2021 Chairman Edward C. Deleon Guerrero presided over an evidentiary hearing of the Commission in Enforcement Action 2020-003 (consolidated). The consolidated enforcement action encompassed actions 2020-003, 2020-004 and 2020-005; and
3. WHEREAS, At the evidentiary hearing held on or about March 02, 2021, the parties mutually requested for the Final Orders regarding Enforcement Action 2020-001 (consolidated) and Enforcement Action 2020-003 (consolidated) to be combined; and
4. WHEREAS, Enforcement Action 2020-001 contains two claims. Claim one alleges that the casino licensee committed a violation of the Casino License Agreement by failing to make for more than twelve hours the required Community Benefit Fund contributions required by Amendment #3 in violation of §175-10.1-675(b)(1), and committed a violation of §175-10.1-1805(b)(15) by breaching a contract by failing to make the required contributions for more than twelve hours. Claim Two alleges that is that the casino licensee committed a violation of the Casino License Agreement by failing to make for more than twelve hours the required Community Benefit Fund contributions required by Amendment #5 in violation of §175-10.1-675(b)(1), and committed a violation of §175-10.1-1805(b)(15) by breaching a contract by failing to make the required contributions for more than twelve hours; and

5. WHEREAS, At the hearing, the Executive Director established, by clear and convincing evidence, through the stipulations, admissions, and exhibits admitted into evidence and matters officially noticed that the casino licensee violated the applicable regulations as alleged in the Complaint. The casino licensee offered no defense to the claims alleged in Enforcement Action 2020-001. The Commission finds that, by clear and convincing evidence, the casino licensee committed two violations of Claim One of Enforcement Action 2020-001 and two violations of Claim Two of Enforcement Action 2020-001; and

6. WHEREAS, The Commission finds by clear and convincing evidence that all four violations committed by the casino licensee in Enforcement Action 2020-001 are major violations pursuant to §175-10.1-2540(c). Notwithstanding the foregoing, the Commission, considering the totality of the circumstances, has determined by clear and convincing evidence pursuant to §175-10.1-2535(a), after applying the factors of §175-10.1-2535(b), that the violations committed by the casino licensee in Enforcement Action 2020-001 are major violations. The commission finds by clear and convincing evidence that: the violations were actions of omission; the casino licensee did not self-report all the facts concerning the violations; the casino licensee did not promptly accept responsibility for the offenses; the casino licensee has numerous actions pending in the courts of the United States of America and Commonwealth; the relative harm suffered by the Commonwealth is moderate to great in that the public's confidence in general and the gaming public specifically, is greatly harmed when the licensee breaches contracts. In mitigation, the harm to the gaming industry generally is minor and the Lottery Commission did grant some relief; and

7. WHEREAS, The four members of Commission participating in the action unanimously determined by clear and convincing evidence that, for Claim One of Enforcement Action 2020-001, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities should be suspended for a period of six months from the effective date of this Order, and the licensee should pay penalties amounting to fifty thousand dollars (\$50,000). Further, the four members of Commission participating in the action unanimously determined by clear and convincing evidence that, for Claim Two of Enforcement Action 2020-001, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities should be suspended for a period of six months from the effective date of this Order, and the licensee should pay penalties amounting to fifty thousand dollars (\$50,000); and

8. WHEREAS, Enforcement Action 2020-002 contains four claims. Claim one alleges that the casino licensee violated Commonwealth law, specifically 4 CMC §2306(b) by failing to pay, for more than twelve hours, the annual license fee when due on August 12, 2020. Claim Two alleges that is that the casino licensee violated the Casino License Agreement by failing to make for more than twelve hours the required annual license fee payment in violation of §175-10.1-610(b). Claim Three alleges that the casino licensee violated §175-10.1-1805(b)(15) by breaching a contract by failing to make the required annual licensee fee payment for more than twelve hours. Claim Four seeks an Order declaring that the casino licensee's failure to pay the annual license fee

in full when due is an unsuitable method of operation and requiring the licensee to pay the annual licensee fee immediately upon the effective date of the Commission's Order; and

9. WHEREAS, At the hearing, the Executive Director established by clear and convincing evidence through the admissions, stipulations, exhibits admitted into evidence, and matters officially noticed that the casino licensee violated the applicable Commonwealth law, the Casino License Agreement and the applicable regulations by not paying the Annual License Fee in full when due. The casino licensee offered a defense by arguing that the annual license fee was subject to the force majeure clause of the Casino License Agreement. The Casino Licensee offered no admissible testimony from the casino licensee that it was unable to pay the annual license fee for any reason at all. The Executive Director argued that the force majeure clause was inapplicable to the Annual License fee as the time for payment was set by statute, and offered testimony that the casino licensee failed to pay the annual license fee not due to force majeure reasons; namely, that IPI had suffered large financial losses prior to the pandemic, that the casino licensee's auditors expressed "going concern" issues prior to the pandemic, and that the then-CEO admitted to the Commission in a public meeting on July 20, 2020 that IPI has some funding to satisfy the annual license fee; and

10. WHEREAS, The Commission finds that the force majeure clause does not, as a matter of law, apply to the payment of the annual license fee, as the time for payment was set by statute, and the Lottery Commission could not amend an act of the Legislature. Notwithstanding the foregoing, the Commission finds by clear and convincing evidence that even if the force majeure clause of the Casino License Agreement could toll the requirement to pay the Annual License Fee, the casino licensee has not established that its failure to make the required annual license fee payment when due was at all related to any force majeure reason. Conversely, the Commission finds that the Executive Director has established by clear and convincing evidence that the casino licensee's failure to make the required annual license fee payment was not due to a force majeure reason; and

11. WHEREAS, The Commission finds, by clear and convincing evidence, that the casino licensee committed one initial violation of Claim One of Enforcement Action 2020-002 and additional violations every day from January 8, 2020 through February 25, 2020 for a total of forty nine violations for that claim; one initial violation of Claim Two of Enforcement Action 2020-002 and additional violations every day from January 8, 2020 through February 25, 2020 for a total of forty nine violations for that claim; one initial violation of Claim Three of Enforcement Action 2020-002 and additional violations every day from January 8, 2020 through February 25, 2020 for a total of forty nine violations for that claim. The Commission further finds by clear and convincing evidence that the declaratory relief sought by Claim Four should be granted; and

12. WHEREAS, The Commission finds by clear and convincing evidence that all violations committed by the casino licensee in Claim One and Claim Two of Enforcement Action 2020-002 are major violations pursuant to §175-10.1-2540(c).

Notwithstanding the foregoing, the Commission, considering the totality of the circumstances, has determined by clear and convincing evidence pursuant to §175-10.1-2535(a), after applying the factors of §175-10.1-2535(b), that the violations committed by the casino licensee in Claims One, Two and Three of Enforcement Action 2020-002 are major violations. The Commission finds by clear and convincing evidence that: the violations were actions of omission; the casino licensee did not self-report all the facts concerning the violations; the casino licensee did not promptly accept responsibility for the offenses; the casino licensee has numerous actions pending in the courts of the United States of America and Commonwealth and before the Commission; the relative harm suffered by the Commonwealth is moderate to great in that the public's confidence in general and the gaming public specifically, is greatly harmed when the licensee breaches contracts; and the casino licensee had some funds to pay for the annual license fee but chose not to. In mitigation, the harm to the gaming industry generally is minor; and

13. WHEREAS, The four members of Commission participating in the action unanimously determined by clear and convincing evidence that, for Claims One, Two and Three of Enforcement Action 2020-002, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities should be suspended indefinitely from effective date of this Order until such time as the casino licensee has paid the Annual License Fee in full, and the licensee should pay penalties amounting to one million five hundred thousand dollars (\$1,500,000) in total. The Commission also determined by clear and convincing evidence that the requested declaratory order should issue; and

14. WHEREAS, Enforcement Action 2020-003 has four claims. Claim One alleges that the casino licensee violated Commission Order 2020-003 by not maintaining the required cash or cash equivalents in a restricted account in a bank in the Commonwealth or United States of America. Claim Two alleges that the casino licensee violated Commission Order 2020-003 when its highest-ranking executives failed to detail the means by which it would comply with the Order. Claim Three requests an Order declaring that the casino licensee's failure to comply with the minimum capital requirements of Commission Order 2020-003 and failure to make the required explanations amount to unsuitable methods of operation and requiring immediate compliance. Claim Four requests an Order declaring that the casino licensee's fiscal and financial capability as owner and operator of the casino has significantly diminished such that the public interest is no longer protected, and requiring the casino licensee to immediately obtain financial capability sufficient to pay all debts as they become due so the public interest is sufficiently protected; and

15. WHEREAS, Enforcement Action 2020-004 has four claims. Claim One alleges that the casino licensee violated Commission Order 2020-004 by not paying accounts payable that were over 89 days old as ordered by the Commission. Claim Two alleges that the casino licensee violated Commission Order 2020-004 by not making the required certifications as ordered by the Commission. Claim Three requests an Order declaring that the casino licensee's failure to comply with the payment and certification

requirements of Commission Order 2020-004 are unsuitable methods of operation and requiring the casino licensee to pay all amounts required by Commission Order 2020-004 immediately upon the effective date of the Order. Claim Four seeks an Order declaring that: the casino licensee is not a “going concern” as that phrase is commonly used in the area of financial accounting; the casino licensee, as a business entity, is not “solvent” as that word is commonly used in the area of financial accounting as of the date of the Order; the casino licensee lacks the present ability to pay debts as they mature and become due; the casino licensee lacks the present ability to pay to public and private entities all payments required by contract; and the casino licensee lacks the present ability to fully construct the entirety of the Initial Gaming Facility located in Garapan, Saipan, CNMI in accordance with all applicable laws, regulations and codes; and

16. WHEREAS, Enforcement Action 2020-005 has four claims. Claim One alleges that the casino licensee violated Commonwealth law, specifically 4 CMC §2309 by failing to pay, for more than twelve hours, the Casino Regulatory Fee in full when due. Claim Two alleges that the casino licensee violated Regulation 175-10.1-1225 by failing to pay the Casino Regulatory Fee in full when due for more than twelve hours. Claim Three alleges that the casino licensee breached a contract by failing to pay, for more than twelve hours, the casino license fee in full when due. Claim Four seeks a declaration that Imperial Pacific International (CNMI) LLC’s failure to pay the casino regulatory fee in full when due amounts to an unsuitable method of operation and requiring the casino licensee to pay the casino regulatory fee in full immediately upon the effective date of the Order; and

17. WHEREAS, At the hearing, the Executive Director established by clear and convincing evidence through the admissions, stipulations, exhibits admitted into evidence and matters officially noticed that the casino licensee violated the applicable laws and regulations and breached the applicable contracts as alleged in the consolidated complaints. The casino licensee offered no defense to the claims alleged in Enforcement Actions 2020-003, 2020-004, and 2020-005. The Commission finds that, by clear and convincing evidence, the casino licensee committed the following violations as alleged in their respective Complaints:

In Enforcement Action 2020-003: One violation of Claim One for the initial violation and additional violations every day from January 8, 2020 through March 1, 2020, for a total of 53 violations; One violation of Claim Two for the initial violation and additional violations every day from January 8, 2020 through March 1, 2020, for a total of 53 violations. The Commission further finds by clear and convincing evidence that the declaratory relief sought by Claim Three and Claim Four should be granted;

In Enforcement Action 2020-004: Three hundred violations of Claim One for the initial day of violation and three hundred additional violations every day from January 8, 2020 through March 1, 2020, for a total of 15,900 violations; Five violations of Claim Two for the initial day of violation and five additional violations every day from January 8, 2020 through March 1, 2020, for a total of two hundred sixty five (265) violations. The Commission further finds by clear

and convincing evidence that the declaratory relief sought by Claim Three and Claim Four should be granted;

In Enforcement Action 2020-005: One violation of Claim One for the initial violation and additional violations every day from January 8, 2020 through March 1, 2020, for a total of 53 violations; One violation of Claim Two for the initial violation and additional violations every day from January 8, 2020 through March 1, 2020, for a total of 53 violations. One violation of Claim Three for the initial violation and additional violations every day from January 8, 2020 through March 1, 2020, for a total of 53 violations. The Commission further finds by clear and convincing evidence that the declaratory relief sought by Claim Four should be granted; and

18. WHEREAS, the Commission finds by clear and convincing evidence that the following violations committed by the casino licensee are major violations pursuant to §175-10.1-2540(c):

In Enforcement Action 2020-003: For Claim 1, the 52 violations from January 8, 2020 through March 1, 2020; For Claim Two the 52 violations every day from January 8, 2020 through March 1, 2020;

In Enforcement Action 2020-004: For Claim One for the 15,600 violations January 8, 2020 through March 1, 2020; For Claim Two for the 260 violations from January 8, 2020 through March 1, 2020;

In Enforcement Action 2020-005: For Claim One all 53 violations; For Claim Two all 53 violations; and

19. WHEREAS, The Commission considering the totality of the circumstances, has determined by clear and convincing evidence pursuant to §175-10.1-2535(a), after applying the factors of §175-10.1-2535(b), that the remaining violations in the consolidated complaints comprising Enforcement Action 2020-003 (consolidated) committed by Imperial Pacific International (CNMI) LLC are major violations. The Commission finds by clear and convincing evidence that: the violations were actions of omission; the casino licensee did not self-report all the facts concerning the violations; the casino licensee did not promptly accept responsibility for the offenses; the casino licensee has numerous actions pending in the courts of the United States of America and Commonwealth and before the Commission; the relative harm suffered by the Commonwealth is moderate to great in that the public's confidence in general and the gaming public specifically, is greatly harmed when the licensee breaches contracts. In mitigation, the harm to the gaming industry generally is minor; and

20. WHEREAS, The five members of the Commission unanimously determined by clear and convincing evidence that, for Claims One and Two of Enforcement Action 2020-003, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities should be suspended indefinitely from effective date of this Order until such time as the casino licensee is in complete compliance with Commission Order 2020-003, and the licensee should pay penalties amounting to One Million five hundred thousand dollars (\$1,500,000) in total. The Commission also determined by

clear and convincing evidence that the requested declaratory orders in Claim Three and Claim Four should issue; and

21. WHEREAS, The five members of the Commission unanimously determined by clear and convincing evidence that, for Claims One and Two of Enforcement Action 2020-004, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities should be suspended indefinitely from effective date of this Order until such time as the casino licensee is in complete compliance with Commission Order 2020-004, and the licensee should pay penalties amounting to Two Million dollars (\$2,000,000) in total. The Commission also determined that the requested declaratory orders in Claim Three and Claim Four should issue; and

22. WHEREAS, The five members of the Commission unanimously determined by clear and convincing evidence that, for Claims One, Two and Three of Enforcement Action 2020-005, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities should be suspended indefinitely from effective date of this Order until such time as the casino licensee has fully paid the Casino Regulatory Fee, and the licensee should pay penalties amounting to One Million five hundred thousand dollars (\$1,500,000) in total. The Commission also determined that the requested declaratory order in Claim Four should issue; NOW, THEREFORE,

23. IT IS HEREBY ORDERED that, as to Claims One and Two of Enforcement Action 2020-001, the portion of the Casino License Agreement which allows Imperial Pacific International (CNMI) LLC to conduct gaming activities is hereby suspended for a period of six months from the effective date of this Order, and the casino licensee shall pay penalties of one hundred thousand dollars (\$100,000) within one month of the effective date of this Order; and

24. IT IS HEREBY FURTHER ORDERED that, as to Claims One, Two, and Three of Enforcement Action 2020-002, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities is suspended indefinitely from effective date of this Order until such time as the casino licensee has paid the Annual License Fee in full; and the licensee shall pay penalties amounting to one million five hundred thousand dollars (\$1,500,000) in total within six months of the effective date of this Order; and

25. IT IS HEREBY FURTHER ORDERED that Imperial Pacific International (CNMI) LLC's failure to pay the Annual License Fee in full when required is an unsuitable method of operation. Imperial Pacific International (CNMI) LLC is ORDERED to pay the Annual License fee in full immediately upon the effective date of this Order; and

26. IT IS HEREBY FURTHER ORDERED that for Claims One and Two of Enforcement Action 2020-003, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities is suspended indefinitely from the effective date of this Order until such time as the casino licensee is in complete compliance with Commission Order 2020-003, and the licensee shall pay penalties

amounting to one million five hundred thousand dollars (\$1,500,000) in total within six months of the effective date of this Order; and

27. IT IS HEREBY FURTHER ORDERED that Imperial Pacific International (CNMI) LLC's failure to comply with the minimum capital requirements of Commission Order 2020-003 and failure to detail the means by which it shall comply with the minimum capital requirements of Commission Order 2020-003 are unsuitable methods of operation. Imperial Pacific International (CNMI) LLC is ORDERED to come into compliance with Commission Order 2020-003 prior to the Licensee seeking the lifting of the suspension of its gaming license; and

28. IT IS HEREBY FURTHER ORDERED that the Commission has determined that Imperial Pacific International (CNMI) LLC's fiscal and financial capability as owner and operator of the casino has significantly diminished such that the public interest is no longer protected. Imperial Pacific International (CNMI) LLC is ORDERED to obtain financial capability sufficient to pay all debts as they become due so the public interest is sufficiently protected prior to the Licensee seeking the lifting of the suspension of its gaming license; and

29. IT IS HEREBY FURTHER ORDERED that for Claims One and Two of Enforcement Action 2020-004, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities is suspended indefinitely from effective date of this Order until such time as the casino licensee is in complete compliance with Commission Order 2020-004; and the licensee shall pay penalties amounting to two million dollars (\$2,000,000) in total within six months of the effective date of this Order; and

30. IT IS HEREBY FURTHER ORDERED that that Imperial Pacific International (CNMI) LLC's failure to comply with the payment and certification requirements of Commission Order 2020-004 is an unsuitable method of operation. Imperial Pacific International (CNMI) LLC is ORDERED to come into compliance with Commission Order 2020-004 immediately upon the effective date of this Order; and

31. IT IS HEREBY FURTHER ORDERED that the Commission has determined that Imperial Pacific International (CNMI) LLC the casino licensee, as a business entity, is not "solvent" as that word is commonly used in the area of financial accounting as of the date of the Order; the casino licensee lacks the present ability to pay debts as they mature and become due; the casino licensee lacks the present ability to pay to public and private entities all payments required by contract; and the casino licensee lacks the present ability to fully construct the entirety of the Initial Gaming Facility located in Garapan, Saipan, CNMI in accordance with all applicable laws, regulations and codes; and

32. IT IS HEREBY FURTHER ORDERED that for Claims One, Two and Three of Enforcement Action 2020-005, the portion of the Casino License Agreement that allows the casino licensee to conduct gaming activities is suspended indefinitely from effective

date of this Order until such time as the casino licensee has fully paid the Casino Regulatory Fee; the licensee shall pay penalties amounting to One Million five hundred thousand dollars (\$1,500,000) in total within six months of the effective date of this Order; and


33. IT IS HEREBY FURTHER ORDERED that Imperial Pacific International (CNMI) LLC's failure to pay the Casino Regulatory Fee in full when required is an unsuitable method of operation. Imperial Pacific International (CNMI) LLC is ORDERED to pay the Casino Regulatory Fee in full immediately upon the effective date of this Order; and


34. IT IS HEREBY FURTHER ORDERED that the Chairman or the Executive Director shall take steps necessary to ensure that this Order is published in the Commonwealth Register as soon as is practicable; and

35. IT IS HEREBY FURTHER ORDERED that this Order is to take effect ten days after its publication in the Commonwealth Register and shall remain in effect until it is repealed or replaced by subsequent Order of the Commission; and

36. NOTICE IS HEREBY PROVIDED that this Order constitutes a final agency order in a contested case. "A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action, is entitled to judicial review of the action within 30 days thereafter in the Commonwealth Superior Court." 1 CMC §9112.

SO ORDERED this 22nd day of April, 2021.

Signature: 
EDWARD C. DELEON GUERRERO
CHAIRMAN
As to Complaint 20-003 (consolidated)

Signature: 
RAFAEL S. DEMAPAN
VICE CHAIRMAN
As to Complaint 20-001 (consolidated)



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COMMISSION ORDER NO: 2021-003

Order Prohibiting the Issuance of New or Renewal Licenses for Junket Operations Pending a Review by the Commission of Part 2600 of the Regulations, and Directing the Executive Director Not to Process any Applications for Junket Licenses.

For good cause determined at the April 22, 2021 public meeting of the Commonwealth Casino Commission, which was duly publicly noticed, and based on the authority granted by the laws of the Commonwealth (including but not limited to Public Laws 18-56, 19-24, and 21-38) and the Regulations of the Commonwealth Casino Commission, NMIAC Chapter 175-10.1, the Commonwealth Casino Commission hereby finds and **ORDERS AS FOLLOWS:**

1. WHEREAS, gaming by the casino licensee has temporarily ceased and junket activity by licensed junket operators has also ceased accordingly. Only eight licenses remain valid, all of which will expire per their own terms before October 1, 2022 (unless sooner terminated); and
2. WHEREAS, in a letter dated April 08, 2021 the Honorable Ralph DLG. Torres, Governor of the Commonwealth of the Northern Mariana Islands, commended the Commission for its accomplishments "establishing a regulatory framework that put a necessary emphasis on the protection of our community and a strict adherence to the laws and norms of our Commonwealth"; and
3. WHEREAS, Governor Torres noted concerns about the present junket program presently authorized by Part 2600 of the Regulations and asked that the Commission "revisit this provision of the regulations, repeal this allowance for Junket Operator licenses, and ... enact the necessary safeguards and penalties ... to ensure that the operations of the casino licensee do not permit Junket Activities within casino(s) under [the Commission's] regulatory authority"; and
4. WHEREAS, the Commission has determined that a comprehensive review of the junket program is warranted and no licenses under the present program should be renewed, nor new licenses issued until the comprehensive review has occurred, and new Regulations are promulgated which address the governor's concerns; and

5. WHEREAS, and the Commission is empowered by Regulation §175-10.1-2615 to condition, suspend or revoke the junket operator license or to enter any order necessary for the regulation of junket activity; NOW, THEREFORE,

6. IT IS HEREBY ORDERED that no license for junket activity pursuant to Part 2600 of the Regulation shall be granted or renewed; and

7. IT IS HEREBY FURTHER ORDERED; the Executive Director is prohibited from processing any application for a new license or license renewal under Part 2600 of the Regulations; and

8. IT IS HEREBY FURTHER ORDERED that the Executive Director shall contact the three present licensees and determine whether said licensees wish to surrender their licenses given the present lack of gaming activity and after such contact, proceed in the manner he deems prudent; and

11. IT IS HEREBY FURTHER ORDERED that the Executive Director's authority to suspend or terminate the registration of any junket representative under §175-10.1-2615 is in no way affected by this Order; and

13. IT IS HEREBY FURTHER ORDERED that the Chairman or the Executive Director shall take steps necessary to ensure that this Order is published in the Commonwealth Register, and this Order is to take effect ten days after its publication in the Commonwealth Register and shall remain in effect until it is repealed or replaced by subsequent Order of the Commission.

SO ORDERED this 22nd day of April, 2021.

Signature: 
EDWARD C. DELEON GUERRERO
CHAIRMAN