

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



COMMONWEALTH REGISTER

**VOLUME 44
NUMBER 12
DECEMBER 28, 2022
Addendum**

COMMONWEALTH REGISTER

VOLUME 44 NUMBER 12 DECEMBER 28, 2022

ADOPTED

Public Notice of Certification and Adoption of Regulations
Amendments to the Sick Leave Bank
Civil Service Commission
Office of Personnel Management 049288

PROPOSED

Public Notice of Proposed Adoption of Procurement Regulations
Northern Marianas Technical Institute 049290

DOL/PUA/CAC/DUA ORDERS

LC Case No. 22-016
Subject: Dismissal of Labor Case; Referral to Enforcement
In the Matter of: Mohammad Islam v. P'Art Corporation
Department of Labor 049328

PUA Case No. 21-0170
Subject: Order Denying Appellant's Request to Reopen
And Reconsider Final Agency Action
In the Matter of: Alex Y. Gablinez v. CNMI Department of Labor,
Division of Employment Services-PUA.
Department of Labor 049331

PUA Case No. 22-201
Subject: Administrative Order Granting
Appellant's Request for Dismissal
In the Matter of: Ramon R. Aquino v. CNMI Dept. of Labor,
Division of Employment Services-PUA.
Department of Labor 049334

PUA Case No.	22-0203	
Subject:	Administrative Order	
In the Matter of:	Alex A. Aquiningoc v. CNMI Dept. of Labor, Division of Employment Services-PUA.	
Department of Labor		049335
PUA Case No.	22-0209	
Subject:	Administrative Order	
In the Matter of:	Charles Rechesengel v. CNMI Dept. of Labor, Division of Employment Services-PUA.	
Department of Labor		049341
PUA Case No.	22-0213	
Subject:	Administrative Order	
In the Matter of:	Juan Ramil C. Anzano v. CNMI Dept. of Labor, Division of Employment Services-PUA.	
Department of Labor		049349
DUA Case No.	22-016	
Subject:	Administrative Order	
In the Matter of:	Norlita T. Ordonio v. CNMI Dept. of Labor, Division of Employment Services-DUA.	
Department of Labor		049356
Enf. Inv. No.	22-008-03	
Comp. Agency No.	22-010	
Subject:	Order and Judgment	
In the Matter of:	Dept. of Labor, Enf. & Compliance v. Mohammed Ayub Ali	
Department of Labor		049357

EXECUTIVE ORDERS

E.O. No.	2022-12
Subject:	Renewal of Declaration of State of Public Health Emergency and Continued Declaration of State of Significant Emergency Establishing Response, Quarantine, and Preventive Containment Measures Concerning Coronavirus Disease 2019 (COVID-19); and Renewal of Order Directing the CNMI Homeland Security & Emergency Management Office, through the CNMI Covid-19 Task Force, and in Partnership with the Commonwealth Healthcare Corporation, to Undertake Necessary Covid-19 Containment Measures by Means of The Development of Emergency Directives to Protect

The Health and Safety of the Public.		
Office of the Governor		049360
E.O. No.	2022-13	
Subject:	Renewal of Declaration of Major Disaster and of Significant Emergency Arising from the Burning Of the Super Typhoon Waste and Debris Site on the Island of Tinian	
Office of the Governor		049362
E.O. No.	2022-14	
Subject:	Renewal of Declaration of State of Public Health Emergency and Continued Declaration of State of Significant Emergency Establishing Response, Quarantine And Preventive Containment Measures Concerning Coronavirus 2019 (COVID-19); and, Renewal of Order Directing the CNMI Homeland Security & Emergency Management Office, through the CNMI Covid-19 Task Force, and in Partnership with the Commonwealth Healthcare Corporation, to Undertake Necessary Covid-19 Containment Measures by Means of The Development of Emergency Directives to Protect the Health and Safety of the Public	
Office of the Governor		049364
E.O. No.	2022-2015	
Subject:	Renewal of Declaration of State of Public Health Emergency and Continued Declaration of State of Significant Emergency Establishing Response, Quarantine And Preventive Containment Measures Concerning Coronavirus 2019 (COVID-19); and, Renewal of Order Directing the CNMI Homeland Security & Emergency Management Office, through the CNMI Covid-19 Task Force, and in Partnership with the Commonwealth Healthcare Corporation, to Undertake Necessary Covid-19 Containment Measures by Means of The Development of Emergency Directives to Protect the Health and Safety of the Public	
Office of the Governor		049366
E.O. No.	2022-16	
Subject:	Renewal of Declaration of State of Public Health Emergency and Continued Declaration of State of Significant Emergency Establishing Response, Quarantine And Preventive Containment Measures Concerning Coronavirus 2019 (COVID-19); and,	

Renewal of Order Directing the CNMI Homeland Security & Emergency Management Office, through the CNMI Covid-19 Task Force, and in Partnership with the Commonwealth Healthcare Corporation, to Undertake Necessary Covid-19 Containment Measures by Means of The Development of Emergency Directives to Protect the Health and Safety of the Public

Office of the Governor 049368

E.O. No. 2022-17
Subject: Renewal of Declaration of State of Public Health Emergency and Continued Declaration of State of Significant Emergency Establishing Response, Quarantine And Preventive Containment Measures Concerning Coronavirus 2019 (COVID-19); and, Renewal of Order Directing the CNMI Homeland Security & Emergency Management Office, through the CNMI Covid-19 Task Force, and in Partnership with the Commonwealth Healthcare Corporation, to Undertake Necessary Covid-19 Containment Measures by Means of The Development of Emergency Directives to Protect the Health and Safety of the Public

Office of the Governor 049370



JAKE MARATITA
Chairperson, CSC

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

**CIVIL SERVICE COMMISSION
OFFICE OF PERSONNEL MANAGEMENT**

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

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION OF REGULATIONS OF THE
CIVIL SERVICE COMMISSION**

AMENDMENTS TO THE SICK LEAVE BANK REGULATIONS

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

I certify by signature below that as published, such adopted regulations are true, complete, and correct copy of the referenced proposed regulations, and that they are adopted without modification.

PRIOR PUBLICATION: These regulations were published as proposed regulations in 2022 Volume 44, Number 09, Pages 049004 to 049018 of the Commonwealth Register dated September 28, 2022.

ATTORNEY GENERAL APPROVAL: The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register pursuant to 1 CMC § 2153 (e).

MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY: None.

AUTHORITY: The Civil Service Commission has statutory authority to promulgate and effect personnel regulations pursuant to 1 CMC § 8117, as amended by Public Law No. 17-80, and specifically the Sick Leave Regulations, as authorized by Public Law No. 8-25.

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: No written or oral comments regarding the proposed regulations were submitted during the 30-day comment period.



I DECLARE under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the 30th day of November 2022, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:



JAKE MARATITA,
Chairperson, Civil Service Commission

November 30, 2022
Date

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

Dated the 6th day of December, 202².



EDWARD MANIBUSAN
Attorney General

Filed and
Recorded by:



ESTHER R.M. SAN NICOLAS
Commonwealth Registrar

12.27.2022
Date



Board of Trustees:

Catherine M. Attao
Chair

Irene Holl
Vice-Chair

Carmelita
Rabauliman-Faisao
Treasurer

Ano Maria Mendiola
Secretary

Keith Stewart
Trustee

Zenn Q. Tomokane
Trustee

Jodina C. Attao
CEO

**PUBLIC NOTICE OF PROPOSED ADOPTION OF
PROCUREMENT REGULATIONS FOR
THE NORTHERN MARIANAS TECHNICAL INSTITUTE**

INTENDED ACTION TO ADOPT THESE PROPOSED REGULATIONS: the Commonwealth of the Northern Mariana Islands, Northern Marianas Technical Institute (NMTech) intends to adopt as permanent regulations the attached Procurement Regulations, pursuant to the procedures of the Administrative Procedure Act, 1 CMC §9104(a). The regulations will become effective ten (10) days after adoption and publication in the Commonwealth Register. (1 CMC §9105(b)).

AUTHORITY: The proposed Procurement Regulations are promulgated under the Authority of 3 CMC §§12142(d). NMTech is empowered by the Legislature under its enabling statute to adopt rules and regulations pertaining to procurement matters.

TERMS AND SUBSTANCE: The proposed Procurement Regulations are set forth to provide the regulations and procurement of goods and services by NMTech.

THE SUBJECTS AND ISSUES INVOLVED: The proposed Procurement Regulations set forth the procedural guidelines for NMTech Procurement of goods and services.

DIRECTIONS FOR FILING AND PUBLICATION: These proposed Procurement 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, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).

COMMENTS: Interested parties may submit written comments on the proposed adoption of the NMTech Procurement Regulations to Ms. Jodina Attao, Chief Executive Officer, Northern Marianas Technical Institute, at P.O. Box 504880 Saipan, MP 96950 or to email address admin@nmtechnmi.org. Comments, data, views, or arguments are due within 30 days from the date of publication of this notice (1 CMC § 9104(a)(1)).

These proposed regulations were approved by the Chairwoman of the Board of Trustees on December 05, 2022.

Submitted by: Catherine Attao
Catherine Attao
Chairwoman, Board of Trustees

12/19/2022
Date

Jodina Attao
Jodina Attao
Chief Executive Officer

12/19/2022
Date

Received by: Victoria T. Guerrero
Victoria T. Guerrero
Acting Special Assistance for Administration

12/20/2022
Date

Filed and
Recorded by: Esther San Nicolas
Esther San Nicolas
Commonwealth Register

12/27/22
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) the proposed regulations attached hereto have been reviewed and approved as to form and legal sufficiency by the Attorney General and shall be published pursuant to 1 CMC § 2153(f).

Edward Manibusan
EDWARD MANIBUSAN
Attorney General

12/27/2022
Date





Board of Trustees:

Catherine M. Attao
Chair

Irene Holl
Vice-Chair

Carmelita
Rabauliman-Faisao
Treasurer

Ana Maria Mendiola
Secretary

Keith Stewart
Trustee

Zenn Q. Tomokane
Trustee

Jodina C. Attao
CEO

**NUTISIAN PUPBLIKU PUT I MANMAPROPONI NA
ADAPTACIÓN NU REGULACIÓN I PROCUREMENT
GI NORTHERN MARIANAS TECHNICAL INSTITUTE**

**I AKSION NI MA'INTENSIONA PARA U MA'ADAPTA ESTI I
MANMAPROPONI NA REGULACION SIHA:** I Commonwealth gi Sangkattan na
Islas Mariñas, i Northern Marianas Technical Institute (NMTech) ha intensiona
para u adapta komu petmanienti na regulasion siha i mañechettun na Regulasion
Procurement, sigun gi manera siha gi Akton Administrative Procedure, I CMC
§9104(a). I regulasion siha umifektibu siempre gi halum dies (10) dihas dispues di
adaptasion yan publikasion gi halum Rehistran Commonwealth. (I CMC
§9105(b)).

ATURIDAT: I mapropoconi na Regulasion Procurement manmaho'gui gi papa' i
Aturidat nu 3 CMC §§12142(d). I NMTech manma'aturisa ginen i Lehislatura para u
makatga huyung i ubligasion-niha ni para u ma'adapta i areklamentu yan regulasion
siha manasosiât para i asunto nu procurement siha.

I TEMA YAN SUSTANSIAN I PALABRA SIHA: I manmapropoconi na
Regulasion Procurement manmepaga mo'na para u pribeni i regulasion yan i
procurement nu fektus yan setbisiu siha ginen i NMTech.

SUHETU YAN ASUNTU NI TINEKKA: I manmapropoconi na Regulasion
Procurement mepaga para i ginihidan manera para i NMTech Procurement nu fektus
yan setbisiu siha.

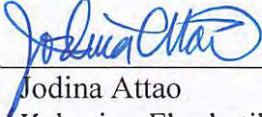
DIREKSION PARA U MAPO'LU YAN MAPUPBLIKA: Esti i manmapropoconi na
Regulasion Procurement debi na u mapupblika gi halum Rehistran Commonwealth
halum i seksiona gi mapropoconi yan nuebu na ma'adapta na regulasion siha (I CMC §
9102 (a)(1)) yan u mepaga gi halum kumbinienti na lugat gi halum i civic center yan
gi halum ufisinan gubietnamentu siha gi kada distritun senadot, parehu gi finu' Inglis
yan i dos na lingguâhin natibu (I CMC § 9104(a)(1)).

I UPIÑON SIHA: I manintires na pattida siha mana'halum gi tinigi' upiñon siha gi
manmapropoconi na adaptasion nu i Regulasion Procurement i NMTech para as
Siñorita Jodina Attao, Kabesiyu Eksakatibun Ufisiât, Northern Marianas Technical
Institute, gi P.O. Box 504880 Saipan, MP 96950 osino para email address
admin@nmtechcnmi.org. I upiñon, infotmasyon, pat agumentu siha debi na u fan
halum gi halum 30 dihas ginen i fetcha nu publikasion esti na nutisia (I CMC §
9104(a)(1)).

Esti i manmaproponi na regulasi3n siha maninaprueba ginen i Kabesiyu nu Board of Trustees gi _____.

Nina'hålum as: 
Catherine Attao
Kabesiyu, Board of Trustees

12/19/2022
Fetcha


Jodina Attao
Kabesiyu Eksakatibu Ufisiåt

12/19/2022
Fetcha

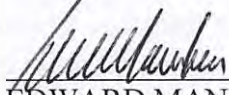
Received by: 
Victoria T. Guerrero
Acting Ispisiåt na Ayudånti para i Atministrasion

12/20/2022
Fetcha

Filed and
Recorded by: 
Esther San Nicolas
Rehistran Commonwealth

12/27/22
Fetcha

Sigun i 1 CMC § 2153(e) yan i 1 CMC § 9104(a)(3), i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'aprueba komu fotma yan sufisienti ligåt ginen i CNMI Abugådu Hiniråt yan debi na u mapupblika. 1 CMC § 2153(f).


EDWARD MANIBUSAN
Abugådu Hiniråt

12/27/2022
Fetcha



Board of Trustees:

Catherine M. Attao
Chair

Irene Holl
Vice-Chair

Carmelita
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Treasurer

Ana Maria Mendiola
Secretary

Keith Stewart
Trustee

Zenn Q. Tomokane
Trustee

Jodina C. Attao
CEO

**ARONGORONGOL TOULAP REEL PPWOMMWOL
MWÓGHUTUGHUTÚL PROCUREMENT IKKA REBWE
ADÓPTÁÁLI NGÁLI
NORTHERN MARIANAS TECHNICAL INSTITUTE**

MÁNGEMÁNGIL MWÓGHUT REEL REBWE ADÓPTÁÁLI PPWOMMWOL MWÓGHUTUGHUT: Commonwealth Téel Falúw kka Efáng Ilól Marianas, Northern Marianas Technical Institute (NMTech) re mángemángil rebwe adóptááli mwóghutughut ikka e appasch bwe ebwe lléghló bwe Mwóghutughutúl Procurement, sáangi mwóghutughutúl Administrative Procurement Act, 1 CMC §9104(a). Ebwe bwunguló mwóghutughut kkaal seigh (10) ráál mwiril aal adóptááli me akkatééwowul me llól Commonwealth Register. (1 CMC §9105(b)).

BWÁNGIL: Ebwe arongowow ppwommwol Mwóghutughutúl Procurement kkaal faal Bwángil 3 CMC §§12142(d). Eyoor bwángiir NMTech sáangi Legislature rebwe adóptááli allégh me mwóghutughut ikka e súllúngáli mwóghutughutúl procurement.

KKAPASAL ME WEEWEL: Ppwommwol Mwóghutughutúl Procurement aa ffat aar afal reel mwóghutughut ngáli akkaméél me alillis (setbisiu) sáangi NMTech.

KKAPASAL ME AUTOL: Ppwommwol Mwóghutughutúl Procurement aa ffat ngáli afal reel mwóghutughut ngáli NMTech akkaméél me alillis (setbisiu).

AFAL REEL AMMWELIL ME AKKATÉÉWOWUL: Ebwe akkatééwow ppwommwol Mwóghutughutúl Procurement me llól Commonwealth Register me llól táilil ppwommwol me ffél mwóghut ikka ra adóptááli (1 CMC § 9102(a)(1)) me ebwe appaschetá me llól civic center me bwal llól bwulasiyol gobetnameento llól senatorial district, fengál reel English me mwáliyaasch (1 CMC §9104(a)(1)).

KKAPAS: Schóo kka re mwuschel isiisilong ischil kkapas wóol ppwommwol adóptáál “NMTech Procurement Regulations” rebwe isch ngáli Ms. Jodina Attao, Chief Executive Officer, Northern Marianas Technical Institute, me P. O. Box 504880 Saipan, MP 96950 ngáre email-li ngáli admin@nmtechnmi.org. Kkapas, data, me ángiingi ebwe toolong llól eliigh ráál mwiril aal akkatééwow arongorong yeel (1 CMC § 9104(a)(1)).

Aa átirow ppwommwol mwóghutughut kkaal sáangi Chairwoman-il Board of Trust of Trustees wóol _____.

Isáliyalong


Catherine Attao

Chairwoman, Board of Trustees

12/19/2022
Ráál



Jodina Attao
Chief Executive Officer

12/19/2022
Ráál

Bwughiyal:



Victoria Y. Guerrero

Acting Special Assistance ngáli Administration

12/20/2022
Ráál

Ammwelil:



Esther San Nicolas
Commonwealth Register

12/27/2022
Ráál

Sángi 1 CMC § 2153(e) me 1 CMC § 9104(a)(3) ppwommwol mwóghutughut ikka e appasch bwe ra takkal amwuri físchiiy me átirowa bwe aa lléghló reel fféerúl me legal sufficiency sángi Soulemelemil Allégh Lapalap me ebwe akkatééwow sángi 1 CMC § 2153(f).



EDWARD MANIBUSAN
Soulemelemil Allégh Lapalap

12/27/2022
Ráál

CHAPTER ____ - 3000

NORTHERN MARIANAS TECHNICAL INSTITUTE

PROCUREMENT RULES AND REGULATIONS

Part 001 General Provisions

Subpart A General

- § 3000-001 Purpose
- § 3000-005 Authority
- § 3000-010 Supplementary General Principles of Law Applicable
- § 3000-015 Requirement of Good Faith
- § 3000-020 Application of Regulations
- § 3000-025 Severability
- § 3000-030 Validity of Contract
- § 3000-035 Remedy Against Employee
- Subpart B Definitions**
- § 3000-040 Definition
- Subpart C Public Access**
- § 3000-045 Public Access to Procurement Information
- § 3000-050 Use of Electronic Media

Part 100 Procurement Organization

Subpart A Procurement Officer

- § 3000-101 Creation of Procurement and Supply Division
- § 3000-105 Procurement Officer
- § 3000-110 Duties of the Officer
- § 3000-115 Contract Oversight
- § 3000-120 Split Contracts
- § 3000-125 Acceptance of Gratuities by Procurement Officer and Supply Division Employees
- Subpart B Procurement Function**
- § 3000-130 Procurement Services
- § 3000-135 Centralized Procurement of Supplies

Part 200 Source Selection and Contract Formation

Subpart A Source Selection

- § 3000-201 Methods of Source Selection
- § 3000-205 Competitive Sealed Bidding
- § 3000-210 Small Purchases

- § 3000-215 Sole Source Procurement
- § 3000-220 Emergency Procurement
- § 3000-225 Competitive Sealed
- § 3000-230 Competitive Selection
- Subpart B Cancellation of Invitation for Bids or Request for Proposals**
- § 3000-235 Cancellation
- Subpart C Qualifications and Duties**
- § 3000-240 Responsible of Bidders and Duties
- § 3000-245 Pre-qualification of Contractors
- Subpart D Types of Contracts**
- § 3000-250 Types of Contracts
- § 3000-251 Change Orders
- Subpart E Inspection and Audit**
- § 3000-255 Right to Inspect Place of Business
- § 3000-260 Right to Audit Records
- Subpart F Reports and Records**
- § 3000-265 Report of Anti-competitive or Deceptive Practices
- § 3000-270 Retention of Procurement Records

Part 300 Procurement of Construction and Architect-Engineer Services

- § 3000-301 Construction Procurement
- § 3000-305 Architect-Engineer Services
- § 3000-310 Two-Phase Design-Build Selection

Part 400 Protests and Disputes

- § 3000-401 Protests to the Chief Executive Officer Education's Decisions to the Board
- § 3000-410 Remedies
- § 3000-415 Effective Date
- § 3000-420 Disputes
- § 3000-425 Appeal Committee

Part 500 Ethics in Public Contracting

- § 3000-501 Definitions of Terms
- Subpart A Standards of Conduct**
- § 3000-505 Policy
- § 3000-510 General Standards
- § 3000-515 Employee Disclosure Requirements

§ 3000-520 Employee Conflict of Interest
§ 3000-525 Gratuities and Kickbacks
§ 3000-530 Prohibition Against Contingent
Fees
§ 3000-535 Contract Clauses
§ 3000-540 Restrictions on Employment of
Present and Former Employees

§ 3000-545 Use of Confidential Information
§ 3000-550 Collusion by Bidders
§ 3000-555 Penalties
§ 3000-560 Authority to Debar or Suspend

Part 600 Miscellaneous
§ 3000-601 Severability

Part 001 - General Provisions

Subpart A - General

§ 3000-001 Purpose

- (a) Interpretation. The regulations in this chapter 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 chapter are:
 - (1) To provide for public confidence in the procedures followed in public procurement;
 - (2) To insure the fair and equitable treatment of all persons who deal with the procurement system of the Northern Marianas Technical Institute;
 - (3) To provide increased economy in Northern Marianas Technical Institute procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds;
 - (4) To foster effective broad-based competition within the free enterprise system; and
 - (5) To provide safeguards for the maintenance of a procurement system of quality and integrity.

§ 3000-005 Authority

The regulations in this chapter are promulgated under the authority of PL 20-92 which make the Board of Trustees accountable and the Chief Executive Officer responsible for procurement and supply in Northern Marianas Technical Institute.

§ 3000-010 Supplementary General Principles of Law Applicable

Unless displaced by the particular provisions of the regulations in this chapter, 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 these regulations.

§ 3000-015 Requirement of Good Faith

The regulations in this chapter require all parties, including Northern Marianas Technical Institute employees and contractors, involved in the negotiation, bidding, performance or administration of the Northern Marianas Technical Institute contracts to act in good faith.

§ 3000-020 Application of Regulations

Except as otherwise specified by law, the regulations in this chapter apply to every expenditure of Northern Marianas Technical Institute funds irrespective of source, including federal assistance monies and Covenant funds, which are not subject to federal procurement requirements. These regulations do not apply to contracts between the government and its political subdivisions or other governments. Nothing in these regulations shall be construed to prevent any governmental body or political subdivision from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding.

§ 3000-025 Severability

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

§ 3000-030 Validity of Contract

No Northern Marianas Technical Institute contract covered by the regulations in this chapter shall be valid unless it complies with these regulations.

§ 3000-035 Remedy Against Employee

Any procurement action of an employee of the Northern Marianas Technical Institute in violation of the regulations in this chapter is an action outside the scope of his or her employment. The Northern Marianas Technical Institute 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

§ 3000-040 Definitions

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

- (a) “Legal counsel” means an assistant attorney general designated by the Attorney General to serve as counsel for the Northern Marianas Technical Institute or a private attorney hired by the Board of Trustees with the consent of the Attorney General.
- (b) “Board of Trustees” means the Board of Trustees of the Northern Marianas Technical Institute.
- (c) “Chief Executive Officer” means the executive officer appointed by the Board of Trustees to administer the Northern Marianas Technical Institute who has full charge and control of the administration and business affairs of the Northern Marianas Technical Institute.
- (d) “Construction” means the process of building, altering, repairing, improving or demolishing 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.
- (e) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.
- (f) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for cost which are allowable and allocable in accordance with the contract terms and these regulations, and a fee, if any.

- (g) “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.
- (h) “Employee” means an individual receiving a salary from the Northern Marianas Technical Institute, including appointive and elective officials and non-salaried individuals, including those on honorarium, performing personal services for the Northern Marianas Technical Institute. This definition extends to Board of Trustees and members of their staff. Consultants, independent contractors and part-time workers shall be considered employees.
- (i) “Goods” means all property, including but not limited to equipment, materials, supplies, food items and commodities and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or other disposal of real and personal property.
- (j) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (i) “NMTI” is the Northern Marianas Technical Institute.
- (l) “Official with expenditure authority” means the chief state officer who may extend, obligate, earmark, encumber or otherwise commit public funds under the Planning and Budgeting Act, as amended, or under any annual appropriation act.
- (m) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.
- (n) “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 contract, and all phases of contract administration.
- (o) “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.
- (p) “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.
- (q) “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all materials respects to the invitation for bids.
- (r) “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.
- (s) “Electronic” means electrical, digital or any other similar technology.

(t) “Contractor” means any person or company that is contracted to provide materials or labor to perform a service or job.

Subpart C - Public Access

§ 3000-045 Public Access to Procurement Information

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 Board of Trustees.

§ 3000-050 Use of Electronic Media

The use of electronic media, including acceptance of electronic signatures, is authorized consistent with the CNMI’s applicable statutory, regulatory or other guidance for use of such media, so long as such guidance provides for:

- (a) Appropriate security to prevent unauthorized access to the bidding, approval, and award processes; and
- (b) Accurate retrieval or conversion of electronic forms of such information into a medium which permits inspection and copying.

Part 100 - Procurement Organization

Subpart A – Procurement Officer

§ 3000-101 Creation of Procurement and Supply Division

There is hereby created in the Northern Marianas Technical Institute a Division of Procurement and Supply under the management of the Chief Executive Officer in the execution of those duties authorized under Public Law 20-92, or under any annual appropriations act.

§ 3000-105 Procurement Officer

The Chief Executive Officer shall appoint a Procurement Officer to administer and supervise the day-to-day activities of the division.

§ 3000-110 Duties of the Officer

The duties and responsibilities of the Officer include, but are not limited to, the following:

- (a) Oversee that these regulations are observed in all Northern Marianas Technical Institute procurement;
- (b) Hear all appeals of protests and disputes;
- (c) Conduct bidding, procurement, negotiation or administration of Northern Marianas Technical Institute contracts upon request of the official with expenditure authority;
- (d) Provide advanced planning for the centralized purchase of Northern Marianas Technical Institute supplies;

- (e) Exercise general supervision and control over all inventories of supplies belonging to the Northern Marianas Technical Institute;
- (f) Establish and maintain programs for the inspection, testing and acceptance of supplies;
- (g) Exercise general supervision and control over the employees of this division.

§ 3000-115 Contract Oversight

- (a) The Procurement Officer is responsible for certifying the correctness of all contracts according to the Northern Marianas Technical Institute policies;
- (b) The contract shall then be approved by the Finance Department (Accountant) or his designee for certification of funds;
- (c) The contract shall be approved by the Chief Executive Officer for expenditure authority;
- (d) The contract shall then be approved by the Chairman of the Board of Trustees;
- (e) The Northern Marianas Technical Institute's legal counsel shall certify the form and legal capacity of every Northern Marianas Technical Institute contract, change order, or purchase order. No contract for personal services or employment shall be approved if it is retroactive for more than thirty days.
- (f) The Personnel Officer shall approve all contracts for employment or personal services, including excepted services contracts and contracts for services by an independent contractor in a non-employment status.
- (g) A contract may be referred back to the Chief Executive Officer for further review based on additional evidence that it may not comply with the regulations in this chapter. If the Chief Executive Officer withdraws approval or refuses to approve a contract, he shall state in writing the basis for his determination.
- (h) 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 and inspection of a project is the primary responsibility of the official with expenditure authority.
- (i) No contract is effective against the Northern Marianas Technical Institute until all the Northern Marianas Technical Institute officials whose signatures appear on the contract form have signed the contract. A contract shall contain a right to audit records clause.

§ 3000-120 Split Contracts

If the Procurement Officer determines that a contract has been split into subcontracts for the purpose of avoiding bidding or if a change order or modification is unreasonably being made to increase the contract price where a contract has been bid and awarded to the lowest responsible and responsive bidder, then the Procurement Officer may require the contract or the modification to be competitively bid. An unreasonable modification or change order would be, for example, one which would have been reasonably foreseeable at the time of the formation of the contract.

§ 3000-125 Acceptance of Gratuities by Procurement Officer and Division Employees

- (a) In addition to the restrictions found in § 60-40-525, the Chief and the employees of the Procurement and Supply Division shall be subject to these additional restrictions to avoid the appearance of impropriety.
- (b) The Chief or his employees cannot accept from any person any gift of value given to them with the intent to influence their business judgement.

Subpart B - Procurement Function

§ 3000-130 Procurement Services

Upon request of any official with expenditure authority, the Procurement Officer shall provide assistance or conduct the bidding, procurement, negotiation or administration of a particular contract.

§ 3000-135 Centralized Procurement of Supplies

The Procurement Officer may, with the approval of the Chief Executive Officer, purchase supplies in large quantities to be relied upon by all departments, agencies, offices and branches when in the best interest of the Northern Marianas Technical Institute. No separate contract or purchase order for these supplies will be approved.

Part 200 - Source Selection and Contract Formation

Subpart A - Source Selection

§ 3000-201 Methods of Source Selection

Unless otherwise authorized by law or by regulation, all Northern Marianas Technical Institute contracts \$50,001.00 and above subject to § 3000-210 shall be awarded by competitive sealed bidding, except as provided in:

- (a) § 3000-210 (Small Purchases);
- (b) § 3000-215 (Sole Source Procurement);
- (c) § 3000-220 (Emergency Procurement);
- (d) § 3000-225 (Competitive Sealed Proposals);
- (e) § 3000-230 (Professional Services);
- (f) § 3000-305 (Architect-Engineer Services).

§ 3000-205 Competitive Sealed Bidding

- (a) Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:
 - (1) An invitation for bids number;

- (2) Date of issuance;
- (3) Name, address and location of issuing office;
- (4) Specific location where bids must be submitted;
- (5) Date, hour and place of bid opening;
- (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (7) Quantity to be furnished;
- (8) Time, place and method of delivery or performance requirements;
- (9) Essential contractual terms and conditions; and
- (10) Any bonding requirements.

(b) **Public Notice.** Adequate public notice of the invitation for bids shall be given a reasonable time prior to the date set forth for the opening of bids. Publication of notice shall be on the school website over a continuous period of four weeks shall be deemed to be adequate notice.

(c) **Bidding Time.** A bidding time of at least four weeks shall be provided, unless the Procurement Officer determines in writing that a shorter period is necessary.

(d) **Bid Receipt.** All bids shall be submitted to the Procurement Office. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office. 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 Procurement Officer. No information contained in the bid shall be disclosed prior to the bid opening. The Procurement Officer shall cause the opened bid to be placed into the sealed receptacle.

(e) **Bid Opening.**

(1) The bid opening shall be conducted by the Procurement Officer at the Office of the Chief Executive Officer. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids.

(2) The Procurement Officer shall be present at the bid opening. The bids received prior to the bid closing date shall be publicly opened. The amount of each bid, together with the name of each bidder shall be recorded, the record and each bid shall be open to public inspection. The Procurement Officer shall prepare a written summary of the bid opening.

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

(g) **Bid Rejection.** A bid may be rejected for any of the following reasons:

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

(2) Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidder's liability to the Northern Marianas Technical Institute. 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;

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

- (iv) Limits the rights of the Northern Marianas Technical Institute.
- (3) Unreasonableness as to price;
- (4) A bid from a non-responsible bidder.

(h) **Correction or Withdrawal of Bids; Cancellation of Awards.** Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved by the Procurement Officer in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Northern Marianas Technical Institute or fair competition shall be allowed. Whenever a bid mistake is suspected, the Chief Executive Officer shall request confirmation of the bid prior to award. In such an instance, if the bidder alleges an error, the Chief Executive Officer shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (h)(1) or (h)(2).

(1) **Correction of Bids.** Correction of bids shall only be permitted when:

- (i) An obvious clerical mistake is clearly evident from examining the bid document. Example of such mistakes are errors in addition or the obvious misplacement of a decimal point; or
- (ii) The otherwise low bidder alleges a mistake and the intended bid 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 may not be permitted to correct a bid mistake resulting from an error in judgement.

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

(3) **Cancellation of Awards.** Cancellation of awards or contracts shall only be permitted when:

- (i) Evidence as to the existence of the mistake is not discovered until after the award;
- (ii) Performance of the contract at the award price would be unconscionable.

(i) **Notice of Intent to Award.** After bid evaluation, a notice of intent to award the contract to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter shall be issued to all bidders. The notice of intent to award is not a promise or guarantee of award, and the intended bidder should not incur any costs based on either the notice of intent to award or reliance of a contract.

(j) **Award.**

(1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. The contract cannot be awarded less than five business days after the issuance of a notice of intent to award pursuant to subsection (i). Unsuccessful bidders shall also be promptly notified.

(2)(i) Notice of an award shall only be made by the presentation of a contract with all of the required signatures to the bidder. No other notice of an award shall be made orally or by letter. No acceptance of an offer shall occur nor shall any contract be formed until a Northern Marianas Technical Institute contract is written and has been approved by all the officials required by law and regulation.

(ii) Northern Marianas Technical Institute contract shall contain a clause which states that 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 prior to the approval of all required Northern Marianas Technical Institute officials.

(3) In the event all bids exceed available funds and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than five per cent, and time or economic considerations preclude re-solicitation of work of a reduced scope, the Chief Executive Officer

may authorize the Procurement Officer to negotiate an adjustment of the bid price, including changes in bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of available funds. The negotiation shall be documented in writing and attached to the bidding documents.

(4) Warranties. Any contract awarded by NMTI must state a warranty of goods, services or construction for a minimum of one year.

§ 3000-210 Small Purchases

Any procurement not exceeding the amounts established herein may be made in accordance with small purchase procedures. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.

(a) 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) For purchases that do not exceed \$5,000 at least one price quote shall be obtained. However, the Procurement Officer 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 \$5000. 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 Procurement Officer copies of receipts for all purchases made under a blanket-purchase order. The Procurement Officer 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 \$5,000, 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 Procurement Officer 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 Procurement Officer may either approve the request or instruct the expenditure authority to solicit additional quotes.

(b) Purchases from the United States General Services Administration (GSA) may be made according to the small purchase procedures of this subsection:

- (1) At least one quote shall be obtained when making purchases, including purchases that exceed \$250,000.

(c) A purchase order may be used as authorization for any of the small purchase procedures of this section.

(d) Purchase orders may also be utilized instead of contracts for purchasing instructional materials, books, and publications.

(e) This section shall not apply to lease or purchase of vehicles, machinery and equipment or to the purchase of professional services.

(f) Construction & Design/Build services may be procured by obtaining three price quotations from qualified contractors & design/builders. Procurement under this subsection shall be limited to renovations of existing structures, repairs, maintenance, materials, and construction equipment. No new buildings or structures shall be built using this subsection. Contracts procured hereunder shall not exceed \$30,000 and shall be accompanied by a justification, in writing, and agreed to and signed by the Chief Executive Officer.

§ 3000-215 Sole Source Procurement

(a) A contract may be awarded for a supply, service, instructional materials or construction item without competition when the Procurement Officer determines in writing that there is only one source for the required supply, service or construction item.

(b) The written determination shall be prepared by the official with expenditure authority and shall contain the following information:

(1) The unique capabilities required and why they are required and the consideration given to alternative sources.

§ 3000-220 Emergency Procurement

(a) Notwithstanding any other provision of the regulations in this chapter, emergency procurement procedures may be used where:

(1) An unusual and compelling urgency precludes full and open competition, and

(2) Delay in award of a contract would result in serious injury, financial or other to the Northern Marianas Technical Institute. An emergency procurement must be as competitive as practicable under the circumstances.

(b) A written justification of the basis for the emergency and for the selection of the particular contractor must be made by the official with expenditure authority. The justification must include:

(1) Description of the action being approved.

(2) Description of the supplies or services required to meet the needs, including the estimated value.

(3) A description of the efforts made to ensure that offers are solicited from as many potential sources as is practicable.

(4) A determination that the anticipated cost to NMTI will be fair and reasonable, and

(5) Data, estimated cost, or other rationale as to the extent and nature of the harm to NMTI.

(c) The justification must be approved by the Procurement Officer and the Chief Executive Officer.

§ 3000-225 Competitive Sealed Proposals

(a) Condition for Use. When the Chief Executive Officer determines in writing upon the advice of the legal counsel that the use of a competitive sealed bidding is either not practical or not advantageous to the Northern Marianas Technical Institute, a contract may be entered into by competitive sealed proposals.

(b) Request for Proposals. Proposals shall be solicited through a request for proposals.

(c) **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) **Receipt of Proposals.** Proposals shall be opened so as to avoid disclosure of the contents to competing offerors during the process of negotiation. A register of proposals shall be prepared and opened for public inspection after contract award.

(e) **Evaluation Factors.** The request for proposals shall state the relative importance of price and other evaluation factors.

(f) **Discussion with Responsible Offerors and Revisions to Proposals.** 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.

(g) **Notice of Intent to Award.** After proposal evaluation, a notice of intent to award the contract to the responsible offeror whose proposal is determined in writing to be the most advantageous to the Northern Marianas Technical Institute, taking into consideration price and the evaluation factors set forth in the request for proposals, shall be issued to all offerors. The notice of intent to award is not a promise or guarantee of award, and the intended offeror should not incur any costs based on either the notice of intent to award or reliance of a contract.

(h) **Award.** Award shall be made to the responsible offeror whose proposal is determined in writing to be most advantageous to the Northern Marianas Technical Institute taking into consideration price and the evaluation factors set forth in the request for proposals. The award cannot be made less than five business days after the issuance of a notice of intent to award pursuant to subsection (g). No other factors or criteria shall be used in the evaluation and the contract file shall contain the basis on which the award is made.

§ 3000-230 Competitive Selection Procedures for Professional Services

(a) **Procurement Method.** The services of accountants shall be procured as provided in this section except when authorized as a small purchase, emergency procurement, sole-source procurement or non-employment services contracts.

(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 Procurement Officer 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. 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) Award. Award shall be made to the offeror determined in writing by the official with expenditure authority to be the best qualified based on the evaluation factors set forth in the request for proposals, and negotiation of compensation determined to be fair and reasonable. 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.

Subpart B - Cancellation of Invitation for Bids or Request for Proposals

§ 3000-235 Cancellation

An invitation for bids or request for proposals may be cancelled and any and all bids or proposals may be rejected, when such action is determined by the Procurement Officer and approved by the Chief Executive Officer to be in the best interests of the Northern Marianas Technical Institute based on:

- (a) Inadequate or ambiguous specifications contained in the solicitation;
- (b) Specifications which have been revised;
- (c) Goods or services being procured which are no longer required;
- (d) Inadequate consideration given to all factors of cost to the Northern Marianas Technical Institute in the solicitation;
- (e) Bids or proposals received indicated that the needs of the Northern Marianas Technical Institute can be certified by a less expensive good or service;
- (f) All offers with acceptable bids or proposals received are at unreasonable prices; or
- (g) Bids were collusive.

Subpart C - Qualifications and Duties

§ 3000-240 Responsible Bidders and Duties

- (a) Awards shall be made only to responsible contractors. To be determined responsible, a prospective contractor must:
- (1) 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 facilities, or the ability to obtain them;
- (7) Be otherwise qualified and eligible to receive award under applicable laws and rules; and
- (8) Submit a valid original business license and other certification as may be required.

(b) **Obtaining Information.** Prior to award, the official with expenditure authority shall obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in subsection (a) above. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility with respect to that bidder or offeror.

(c) **Right of Non-disclosure.** Information furnished by a bidder or offeror pursuant to subsection (b) may not be disclosed outside of the office of the Chief Executive Officer, the Procurement Officer, and legal counsel or any involved Northern Marianas Technical Institute Employee without 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 official with expenditure authority stating the basis for the determination and this shall be placed in the contract file.

§ 3000-245 Pre-qualification of Contractors

Prospective suppliers of goods or services may be pre-qualified for particular types of construction, goods and services when determined necessary by the Procurement Officer. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, pre-qualified suppliers. In no event will bidders be allowed to qualify after the bid opening.

Subpart D - Types of Contracts

§ 3000-250 Types of Contracts

(a) Use of a cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited.

(b) Northern Marianas Technical Institute contracts shall utilize a firm fixed priced unless use of a cost reimbursement contract is justified under subsection (c).

(c) A cost reimbursement contract may be used when the official with expenditure authority determines in writing which is attached to the contract 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;
- (2) Use of a firm fixed price contract could seriously affect the contractor's financial stability or result in payment by the Northern Marianas Technical Institute for contingencies that never occurred; or
- (3) Use of a cost reimbursement contract is likely to be less costly to the Northern Marianas Technical Institute than any other type due to the nature of the work to be performed under the contract.

§ 3000-251 Change Orders

(a) A change order will only 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 by either party. However, no change order resulting in an increase in contract cost, or time shall be allowed when it is the direct result of either party's inexperience, inefficiency, or competence.

(b) Before adding significant new work to existing contracts, the Procurement and Supply officer shall thoroughly assess whether it would be more prudent to seek competition. This assessment shall be in writing and will articulate the specific need for the good or service, the reason(s) it should not be competitive, and any circumstances that led to her decision. All change orders which increase the original contract price by 25% shall automatically be procured through competitive procedures except when there is an emergency or when there is a sole source procurement. At no time shall more than two change orders be allowed to a contract for services where the additional services are trainings or other professional services.

(c) Change orders for construction contracts shall be exempt from subsection (b) as it relates to the automatic prohibition on change orders that increase the price by 25%. A change order for a construction contract may be increased by more than 25%, and not automatically procured through competitive procedures, if:

(1) The Capital Improvements Projects office determines, in writing, that the change order is in the best interest of the Northern Marianas Technical Institute because:

(i) Utilizing a competitive process will unreasonably delay construction; or

(ii) Utilizing a competitive process will not result in cost savings to the Northern Marianas Technical Institute; or

(iii) The project is necessary to protect the health and welfare of the students and staff of the Northern Marianas Technical Institute.

(2) The Chief Executive Officer must approve, in writing, any change order processed under this section.

(d) Contractors shall not be allowed to continue working beyond the expiration term of a contract in the absence of an approved new contract or change order. Change orders shall be processed under the procedures for processing new contracts.

Subpart E - Inspection and Audit

§ 3000-255 Right to Inspect Place of Business

The Board of Trustees and the Chief Executive Officer, may at reasonable times, 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 Northern Marianas Technical Institute.

§ 3000-260 Right to Audit Records

As required by section 404 of Public Law 3-91, 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 Northern Marianas Technical Institute contract or grant for a period of three years after the final payment under the contract or grant. A clause to this effect shall appear in all Northern Marianas Technical Institute contracts and obligations.

Subpart F - Reports and Records

§ 3000-265 Report of Anti-competitive or Deceptive Practices

(a) When for any reason any person suspects the following practices are occurring among bidders, offerors, contractors or subcontractors, a notice of the relevant facts shall be transmitted to the legal counsel without delay:

- (1) Unfair methods of competition;
- (2) Deceptive acts; or
- (3) Unfair business practices.

(b) These acts are more fully defined at 4 CMC §§ 5101 through 5206.

§ 3000-270 Retention of Procurement Records

(a) All procurement records shall be retained by the Board of Trustees, the Chief Executive Officer and the Procurement Officer.

(b) The Procurement Officer shall maintain a record listing of all contracts made under sole source procurement or emergency procurement for a minimum of five years. The records 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.

(c) All procurement records, except those designated herein as not subject to disclosure, shall be available to public inspection.

Part 300 - Procurement of Construction, Design/Build and Architect-

Engineer Services § 3000-301 Construction Procurement

(a) Invitation for Bids

(1) Deposit. The official with expenditure authority shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.

(2) Contents. The invitation for bids shall be prepared in accordance with § 60-40-205(a). In addition, the following items shall be included in the invitation for bids.

- (i) Notice to Bidders. General information regarding the project;
- (ii) Instruction to Bidders. Information on the preparation of bids, bid security requirements and forms and certifications that must 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 governing the technical aspects of the work to be performed.

(b) Bid Security

(1) Requirement. Bid security shall be required for all competitive sealed bidding on construction contracts where the price is estimated by the Chief Executive Officer to exceed \$25,000.00 or when the Chief Executive Officer determines it is in the interest of the Northern

Marianas Technical Institute. Bid security shall be on a bid bond, in cash, by certified check, cashier's check or other form acceptable to the Northern Marianas Technical Institute. A surety company shall hold the certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety or other surety acceptable to the Northern Marianas Technical Institute legal counsel.

(2) Amount. Bid security shall be an amount equal to at least fifteen per cent of the amount of the bid or other amount as specified in the invitations for bids depending upon the source of funding.

(3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as non-responsive.

(c) Contract Performance and Payment Bonds

When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the Northern Marianas Technical Institute and shall become binding on the parties upon the execution of the contract:

(1) Performance bond satisfactory to the Chief Executive Officer, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Chief Executive Officer, in an amount equal to one hundred per cent of the price specified in the contract; and

(2) A payment bond satisfactory to the Chief Executive Officer, executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Chief Executive Officer, for the protection of all persons supplying labor and materials to the contractor or its subcontractors for the performance of the work provided for in the contract. The bond shall be in an amount equal to one hundred percent of the price specified in the contract.

(3) Bonding Requirement. Any bonds secured by the contractor must have an AM's Best rating or higher through an agency deemed satisfactory by the Chief Executive Officer.

(d) Suits on Payment Bonds.

(1) 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 therefore 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 or sums justly due such person; provided, however, that 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 materials 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 be personally served or served 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.

(e) Suits on Payment Bonds. Where and When brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth; but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was

performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(f) **Fiscal Responsibility.** Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the Chief Executive Officer as to the effect of the contract modification, change order or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order or adjustment in contract price shall 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 budget as it existed prior to the contract modification, change order or adjustment in contract price under consideration; 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.

§ 3000-305 Architect-Engineer Services

(a) **Procurement Method.** Architect-engineer services shall be procured as provided in this section except when authorized as a small purchase or emergency procurement.

(b) **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.

(c) **Selection.** The Chief Executive Officer and the Northern Marianas Technical Institute's Procurement office shall jointly maintain files of current statements of qualifications of architect-engineer firms. After public announcement of requirements for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms regarding the 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.

(d) **Negotiation.** The Chief Executive Officer shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the Northern Marianas Technical Institute. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the firms, the office with expenditure authority shall then select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.

§ 3000-310 Two-Phase Design-Build Selection Process

(a) The two-phase design-build selection process procedures shall be used when the procurement officer determines that this method is appropriate, based on the following:

1. Three or more *offers* are anticipated.

2. Design work must be performed by *offerors* before developing price or cost proposals, and *offerors* will incur a substantial amount of expense in preparing *offers*.
3. The following criteria have been considered:
 - i. The extent to which the project requirements have been adequately defined.
 - ii. The time constraints for delivery of the project.
 - iii. The capability and experience of potential contractors.
 - iv. The suitability of the project for use of the two-phase selection method.
 - v. The capability of the agency to manage the two-phase selection process.
 - vi. Other criteria established by the Chief Executive Officer.
- (b) Scope of work. NMTI shall develop, either in-house or by contract, a scope of work that defines the project and states the requirements. The scope of work may include criteria and preliminary design, budget parameters, and schedule or delivery requirements.
- (c) Procedures. One solicitation may be issued covering both phases, or two solicitations may be issued in sequence. Proposals will be evaluated in Phase One to determine which *offerors* will submit proposals for Phase Two. One contract will be awarded using competitive negotiation.
 1. Phase One.
 - i. Phase One of the solicitation(s) shall include:
 1. The scope of work;
 2. The phase-one evaluation factors, including:
 - a. Technical approach (but not detailed design or technical information)
 - b. Technical qualifications, such as-
 - i. Specialized experience or technical competence;
 - ii. Capability to perform
 - iii. Past performance of the offeror's team (including architect-engineer and construction members); and
 - iv. Other appropriate factors (excluding cost or price related factors, which are not permitted in Phase-One)
 - c. Phase-Two Evaluation factors; and
 - d. A statement of the maximum number of *offerors* that will be selected to submit phase-two proposals. The maximum number specified in the solicitation shall not exceed five unless the procurement officer determines, for that particular solicitation, that a number greater than five is in the Government's interest and is consistent with the purposes and objectives of the two-phase design-build selection procedures. The procurement officer shall document this determination in the contract file. For acquisitions greater than \$4.5 million, the determination shall be approved by the Chief Executive Officer.
 - e. After evaluating phase-one proposals, the procurement officer shall select the most highly qualified *offerors* (not to exceed the maximum number specified in the solicitation) and request that only those *offerors* submit phase-two proposals.
 2. Phase-Two:
 - i. Phase-two of the solicitations shall be prepared and include phase-two evaluation factors developed. Examples of phase-two technical evaluation factors include design concepts, management approach, key personnel and proposed technical solutions.

- ii. Phase-two of the solicitation(s) shall require submission of technical and price proposals which shall be evaluated separately.

Part 400 - Protests and Disputes

§ 3000-401 Protests to the Chief Executive Officer

(a) General

(1) Any actual or prospective bidder, offeror, or contractor who asserts a claim or asserts that it has been aggrieved or will be aggrieved in connection with the solicitation or award of a contract may protest to the Chief Executive Officer no later than five (5) days after the issuance of a Notice of Intent to Award. The protest shall be received by the Chief Executive Officer in writing prior to the award of a contract. For competitive sealed bids and competitive sealed proposals, protests shall not be submitted before the issuance of a notice of intent to award. The written protest shall state fully the factual and legal grounds for the protest.

(2) Other persons, including bidders, involved in or affected by the protests shall be given notice of the protest and its basis in appropriate cases. The protesting party shall provide such notice and a copy of its protest to all other bidders involved in or affected by the protest and shall file a declaration or proof of service with the Chief Executive Officer. Proof of notice is required by the protesting party to other bidders or proposers within two days of filing its protest. These persons may submit their views and relevant information to the Chief Executive Officer within five days after receiving notice by the protesting party. The Chief Executive Officer may extend the period of time to submit views and relevant information if the Chief Executive Officer certifies that he/she believes the complexity of the matter requires a longer period of time. The submission of views may include any factual statements; briefs; memoranda; declarations; and other information which is relevant and necessary for the determination of the protest.

(3) The Chief Executive Officer shall decide the protest within five calendar days after the protest is filed unless the Chief Executive Officer certifies that the complexity of the matter requires a longer time, in which event the Chief Executive Officer shall specify the appropriate longer time. If the Chief Executive Officer fails to render a decision or determination within such period, the protesting party may file its appeal to the Appeal Committee of the State Board of Trustees by filing such Notice of Appeal with the Chairperson through the Board Secretary at the State Board of Trustees Office.

(4) When a protest has been appealed to the Appeal Committee, as provided in these procedures, the Chief Executive Officer shall submit a report, and the Chief Executive Officer should include with his/her 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;
- (iv) The solicitation, including the specifications on portions relevant to the protest;
- (v) the abstract of offers or relevant portions;
- (vi) Any other documents that are relevant to the protest; and
- (vii) The Chief Executive Officer'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 Chief Executive Officer's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Chief Executive Officer shall be considered the complete administrative record on appeal to the Appeal Committee unless the Appeal Committee supplements the record with additional testimony or evidence.

(5) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the Chief Executive Officer's decision has been taken to the Appeal Committee, the Chief Executive Officer shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above.

(b) Protest

(1) When a proper protest against the making of an award is received, the award shall 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)(2) below.

(2) When a written protest is received, award shall not be made until the matter is resolved, unless the Chief Executive Officer determines that:

- (i) The materials and services to be contracted for are urgently required;
- (ii) Delivery or performance will be unduly delayed by failure to make award promptly; or
- (iii) A prompt award will otherwise be advantageous to the Northern Marianas Technical Institute.

(3) If award is made under subsection (b)(2) above, the Chief Executive Officer shall document the file to explain the need for an immediate award. The Chief Executive Officer also shall give written notice to the protester and others concerned of the decision to proceed with the award.

(c) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this subpart are deemed to be working days of the Northern Marianas Technical Institute. 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.

§ 3000-405 Appeals of Chief Executive Officer's Decisions to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Chief Executive Officer may be taken provided that the party taking the appeal has first submitted a written protest to the Chief Executive Officer and otherwise fully complied with § 3000-401, and the Chief Executive Officer has denied the protest or has failed to act on the protest within the time provided.

(b) Form of Appeal. No particular form of pleading is required for filing an appeal to the Appeal Committee. The appeal shall, however:

- (1) Include the name and address of the appellant;
- (2) Identify the name and 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 Appeal Committee.

(c) Time for Filing an Appeal. An appeal from the Chief Executive Officer's decision must be received by the Appeal Committee not later than five days after the appellant received the decision of the Chief Executive Officer, or, in the event that the Chief Executive Officer has not decided the protest, within three days from the date that the Chief Executive Officer should have decided the protest pursuant to § 3000-401. Any appeal received after these time limits shall not be considered

by the Appeal Committee unless good cause is shown or unless the Appeal Committee determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the Northern Marianas Technical Institute should be appeal be considered.

(d) Notice of Protest, Submission of Chief Executive Officer's Report and Time for Filing of Comments on Report.

(1) The Chairperson of the Appeal Committee, immediately upon appointment by the Board Chairperson, shall notify the Chief Executive Officer in writing within one day of appointment, requesting the Chief Executive Officer to give notice of the appeal to all bidders or proposers who appear to have a reasonable prospect of receiving an award if the appeal is denied (hereinafter in this section, "noticed parties"). The Chief Executive Officer shall furnish copies of the protest and appeal documents to such noticed parties with instructions to communicate further directly with the Appeal Committee.

(2) The Appeal Committee shall request the Chief Executive Officer to submit a complete report on the appeal to the Appeal Committee as expeditiously as possible (generally within thirty calendar days) in accordance with § 3000-401(a)(3) and (4) and to furnish a copy of the report to the appellant and noticed parties.

(3) Comments on the Chief Executive Officer's report shall be filed by the protesting party and any noticed party with the Appeal Committee within five days after the Appeal Committee's receipt of the report, with a copy to the Chief Executive Officer, other noticed parties, and appellant, as applicable. The Appeal Committee may extend the period of time to submit comments if the Appeal Committee certifies that it believes the complexity of the matter requires a longer period of time. The Appeal Committee may, at its discretion, allow the protesting party, noticed parties, and the Chief Executive Officer to submit rebuttals to the comments on the Chief Executive Officer's report submitted by the protesting party and noticed parties. If rebuttals are permitted, the Appeal Committee may set deadlines for their submission. All rebuttal submissions must be forwarded by the rebutting party to the Chief Executive Officer, protesting party, and other noticed parties.

(4) The failure of an appellant or any noticed 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, award shall not be made until the appeal is resolved, unless awarded is done in a manner consistent with § 3000-401(b)(2).

(f) Submission of Additional Information. Any questions posed or additional information requested by the Appeal Committee shall be furnished as expeditiously as possible. The Appeal Committee may set a reasonable deadline for the submission of information or responses to questions. Any questions or requests, along with corresponding responses or submissions shall be made, upon request, available to any other interested party, except to the extent that the withholding of information is permitted or required by law. The Appeal Committee may allow for interested parties to comment on any answers or information submitted pursuant to this subsection in a manner and timeframe it deems reasonable.

(g) Conference. The Appeal Committee may conduct a conference on the merits of the appeal with the appellant and Chief Executive Officer. Alternatively, either party may request such a conference to be held at the discretion of the Appeal Committee. The Appeal Committee has the discretion to include other parties at the conference.

(h) Time for Decision; Notice of Decision: The Appeal Committee shall, if possible, issue a decision on the appeal within thirty calendar days after all information necessary for the resolution of the appeal has been received. A copy of the decision shall immediately be mailed or otherwise transmitted to the appellant, other participating parties, and the Chief Executive Officer.

§ 3000-410 Remedies

(a) Remedies Prior to Award. If prior to award the Chief Executive Officer or the Appeal Committee determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the solicitation or proposed award shall be:

- (1) Cancelled; or
- (2) Revised to comply with law or regulation.

(b) Remedies After an Award. If after an award the Chief Executive Officer or the Appeal Committee determines that solicitation or award of a contract is in violation of law or regulation, then:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (i) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Northern Marianas Technical Institute; or
 - (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (i) The contract may be declared null and void; or
 - (ii) The contract may be ratified and affirmed if such action is in the best interests of the Northern Marianas Technical Institute, without prejudice to the Northern Marianas Technical Institute's right to such damages as may be appropriate.

(c) Finality of Findings of Fact by the Appeal Committee. A determination of an issue of fact by the Appeal Committee under this part shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous. Any aggrieved party shall thereafter file its petition to review the Appeal Committee's determination as an agency decision under the CNMI Administrative Procedure Act and applicable rules of administrative procedure with the CNMI Superior Court.

§ 3000-415 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of the Northern Marianas Technical Institute to contract with a business after bidding, or the cancellation of bids which may or may not be the subject of lawsuit but have not reached final judgment as of the effective date of this chapter shall be heard in accordance with this part upon the request of the actual or prospective bidder, offeror, or contractor who is aggrieved.

§ 3000-420 Disputes

(a) Any dispute between the Northern Marianas Technical Institute and a contractor relating to the performance, interpretation of, or compensation due under a contract, which is the subject of this chapter, must be filed in writing with the Chief Executive Officer within ten days after knowledge of the facts surrounding the dispute.

(b) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the dispute is necessary, the Chief Executive Officer shall review the facts

pertinent to the dispute, secure necessary legal assistance and prepare a written description that shall include:

- (1) Description of the dispute;
- (2) Reference to pertinent contract terms;
- (3) Statement of the factual areas of disagreement or agreement; and
- (4) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(c) Appeals. The Appeal Committee shall review and render a decision on an appeal from an adverse decision timely taken by a contractor. The Appeal Committee may require a hearing or that information be submitted on the record, in its discretion. The Appeal Committee may affirm, reverse or modify the decision or remand it for further consideration.

(d) Duty to Continue Performance. A contractor that has a dispute pending before the Chief Executive Officer or an appeal before the Appeal Committee must continue to perform according to the terms of the contract and failure to so continue shall be deemed to be a material breach of the contract unless he/she obtains a waiver of this provision by the Chief Executive Officer or Appeal Committee.

§ 3000-425 Appeal Committee

The Appeal Committee is comprised of three members of the Board of Trustees appointed by the Board Chairperson to hear any appeal under these provisions. The Board Chairperson shall designate one of the three members as the Appeal Committee Chairperson.

Part 500 - Ethics in Public Contracting

§ 3000-501 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 the Northern Marianas Technical Institute 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:
 - a. 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
 - b. 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 or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

Subpart A - Standards of Conduct

§ 3000-505 Policy

Public employment is a public trust. In Northern Marianas Technical Institute contracting, public Employees shall discharge their duties impartially so as to:

- (a) Insure fair competitive access to Northern Marianas Technical Institute procurement by reasonable contractors; and
- (b) Conduct themselves in a manner as to foster public confidence in the integrity of the Northern Marianas Technical Institute.

§ 3000-510 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, employee must meet the requirements of this chapter.
- (b) Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this chapter is also a breach of ethical standards.

§ 3000-515 Employee Disclosure Requirements

- (a) Disclosure of benefit received from contract. Any Employee who has, or obtains any benefit from any Northern Marianas Technical Institute contract with a business in which the Employee has financial interest, shall report such benefit to the Chief Executive Officer.
- (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.

§ 3000-520 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 that:
 - (1) The Employee or any member of the employee's immediate family has a financial interest pertaining to the procurement;
 - (2) A business or organization in which the employee, or any member of the Employee's immediate family, has a financial interest pertaining to the procurement; or
 - (3) Any other person, 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 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 Chief Executive Officer 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 for an advisory opinion as to what further participation, if any, the employee may have in the transaction.

§ 3000-525 Gratuities and Kickbacks

(a) Gratuities. It shall be a breach of ethical standards for any person to 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 therefore.

(a) Kickbacks. It 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 than subcontractor or any person associated therewith as an inducement for the award of a subcontract or order.

§ 3000-530 Prohibition Against Contingent Fees

(a) Contingent fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure Northern Marianas Technical Institute contracts upon an agreement or understanding for a commission, percentage, brokerage 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 contractor. Every person, before being awarded a Northern Marianas Technical Institute 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.

§ 3000-535 Contract Clauses

The prohibitions against gratuities, kickbacks, and contingent fees shall be conspicuously set forth in every contract and solicitation.

§ 3000-540 Restrictions on Employment of Present and Former Employees

(a) Present Employee. It shall be a breach of ethical standards for any Employee 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 Northern Marianas Technical Institute for whom the Employee is employed.

(b) Restrictions on former Employee 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 Northern Marianas Technical Institute, 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 Northern Marianas Technical Institute is a party or has a direct or substantial interest.

§ 3000-545 Use of Confidential Information

It 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.

§ 3000-550 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the authorizing agent in the awarding of contracts is prohibited. The Chief Executive Officer may declare the contract void if he finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the Northern Marianas Technical Institute.

§ 3000-555 Penalties

- (a) Northern Marianas Technical Institute employees. A Northern Marianas Technical Institute employee who violates the provisions of the rules and regulations in this chapter is subject to adverse action as may be appropriate in his or her particular circumstances. This action includes but is not limited to reprimand, suspension without pay, termination of employment, civil injunction, civil suit for damages or return of Northern Marianas Technical Institute money, or criminal prosecution.
- (b) Contractors. A contractor who violates a provision of the rules and regulations in this chapter shall be subject to a written warning of reprimand, the termination of the contract or suspension from being a contract or subcontractor under a Northern Marianas Technical Institute contract in addition to other penalties prescribed by law.
- (c) All proceedings under this section must be in accordance with due process requirements.

§ 3000-560 Authority to Debar or Suspend

- (a) Authority.
 - (1) After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the Chief Executive Officer after consultation with the Northern Marianas Technical Institute legal counsel, shall have authority to debar a person for cause from consideration for award of contracts.
 - (2) The debarment shall not be for a period of more than three years. The Chief Executive Officer, after consultation with Northern Marianas Technical Institute legal counsel, 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.
- (b) Causes for debarment or suspension. The causes for debarment or suspension include the following:
 - (1) Conviction for commission of a criminal offense is an incident of obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
 - (2) Conviction under Commonwealth or federal statutes of embezzlement, theft, forgery, bribery, 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 Northern Marianas Technical Institute contractor;

(3) 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;

(4) Violation of contract provisions, as set forth below, of a character which is regarded by the Chief Executive Officer to be so serious as to justify debarment action:

(i) Deliberate failure without good cause to perform in accordance with the specifications within the time limits provided in the contract; or

(5) 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;

(6) Any other cause that the Chief Executive Officer determines to be so serious and compelling as to effect responsibility as a Northern Marianas Technical Institute contractor, including debarment by another Northern Marianas Technical Institute entity; and

(7) For violation of any of the ethical standards set forth in part 500.

(c) Decision. The Chief Executive Officer shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(d) Notice of decision. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Part 600 - Miscellaneous

§ 3000-601 Severability

If any provision of the regulations in this chapter or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end, the provisions of these regulations are severable.



Northern Marianas Technical Institute

P.O. Box 504880 Saipan MP 96950

Tel. No.: (670) 235-6684

Northern Marianas Technical Institute
Board of Trustees Regular Meeting
Tuesday, December 05, 2022
10:00 a.m., NMTech Lower Base Campus

Meeting Minutes

I. Call to Order

Meeting called to order at 10:05am. [attendance: Chairwoman Attao, Trustee Mendiola, Trustee Stewart, Trustee Tomokane, Trustee Faisao, Trustee Holl]

II. Adoption of Agenda

Motion to adopt by Trustee Holl, seconded by Trustee Faisao

III. Adoption of Meeting Minutes

a. September 29, 2022

Motion to adopt by Trustee Holl, seconded by Trustee Tomokane

IV. Public Comments

V. Unfinished Business

a. NMTech By-Laws

Chairwoman Attao: by-laws were sent to the AG's office for review. Deputy AG sent it back via email with her comments. DAG comments were to include citations of the public laws which accompany the statements. By-laws were shared via email to all BoT members to review. Chairwoman Attao moved to vote on the by-laws at the next board meeting to allow all members to review and go through the comments by DAG.

b. Nominating Committee Tinian BoT Vacancy

Trustee Mendiola: committee met on November 14. Committee came up with a list of nominees to the Governor. Trustee Mendiola and CEO Attao expressed how difficult it is to fill the vacancy for Tinian. Trustee Mendiola will follow up with the governor's office regarding the nominees.

VI. New Business

a. NMTech Policies Promulgation

-CEO Attao provided copies of policies on HR and students services to the Board to review, along with the process and signature requirements for the promulgation of regulations. Chairwoman inquired if the 30-day comment period begins at the signing of the notice or the publication of the notice. Amy will clarify with the AG's office.

-Procurement Regulations: Amy received the translations of the notices from the language commission. Trustee Holl motions to adopt procurement regulations as permanent, seconded by Trustee Tomokane.

b. FY 2022 Annual Report

CEO Attao went through the Annual Report, informed BoT copies will be distributed to various agencies and partners. Trustee Tomokane suggested to share year highlights possibly in news papers as an insert to reach new partners and other agencies in the community and use as a marketing strategy to high light accomplishments and share with the community.

c. FY 2024 Budget Request

CEO Attao shared with BoT the 2024 budget request. Trustee Tomokane requested for previous years budgets (FY 22 & 23) for a comparison over the years. CEO Attao will provide previous budgets to the board.

d. Five-year Strategic Plan

Trustee Stewart requests an analysis of trades needs and courses offered at NMTech. Chair Attao and Trustee Faisao have met with Department of Commerce, Labor and are still awaiting report from the agencies. When received, it will be forwarded to Programs Committee. Additionally, Chair Attao suggests a meeting with exiting members of office to gather information or feedback from respective officials.

VII. Committee Updates

a. Finance

Sasha reports on current funds: closed out FY 2022 with carryover of \$200,000, just received \$150,000 from FY 2022 CW funds, \$80,000 in General funds.

b. Personnel

None to report

c. Programs

Trustees Tomokane and Stewart to plan a meeting with instructors in January. They have ideas for baseline with instructors. Amy will send a directory of staff information to assist with scheduling the meeting.

d. Foundation

Committee will meet next week and go over the draft of the by-laws.

VIII. Sub-committee Updates

- a. EDA Construction Project: Trustee Stewart: Committee met with EM Chen. AIA contract to be drafted by EM Chen. Joy provided copy of contract just received by EM Chen [during the meeting]. Proposed to consider phasing of the lots, provide number of rooms, detailed budget and contingencies. It was recommended to the team to set hard deadlines and to take minutes of meetings. Joy will share with the board a copy of the actual award and the application. Chair Attao requesting for other members of the board to be actively involved and assist in the meetings. Subcommittee will put together a briefing package. Trustee Stewart asked who has the decision authority over the matters for the contract and details (i.e.

approval of design, plans, etc). CEO Attao has the approval authority, with the concurrence of the Chairwoman, or their designee.

IX. Announcements

CEO Attao introduced the recently hired Curriculum Coordinator, Margie Ray Santos and the Project Coordinator, Leiana Ogumoro.

Chair Attao also stated to ensure that all agendas for Board Meetings must include an Executive Session, as todays did not and was not noticed and included when Agenda was adopted.

CEO Attao announced to schedule next board meeting on January 23, 2023 at 10am.

X. Adjournment

Trustee Holl motioned to adjourn at 12:32pm, seconded by Trustee Tomokane.

Adopted on: _____

Chairwoman signature: _____



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Labor Case No. 22-016
)
Mohammad Islam,)
)
Complainant,) DISMISSAL OF LABOR CASE;
) REFERRAL TO ENFORCEMENT
)
v.)
)
P'Art Corporation,)
)
Respondent.)

I. INTRODUCTION

This matter came for an Order to Show Cause Hearing on December 2, 2022 at 9:00 a.m. at the Administrative Hearing Office. Complainant Mohammad Islam ("Complainant") was present and self-represented. Respondent P'Art Corporation ("Respondent") was present and represented by President Jun Ho Park.¹ Interpreter Manzurul Alam² was present to facilitate communications.

II. APPLICABLE LAW & DISCUSSION

Pursuant to 3 CMC § 4947(a), "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." Pursuant to NMIAC § 80-20.2-130(c), dismissal is warranted on the following grounds: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; (4) insufficiency of service of process; and (5) failure to state a claim upon which relief can be granted. *See also* NMIAC § 80-20.10485(b).

On October 13, 2022, Complainant filed a complaint for unpaid wages, retaliation, and illegal termination. Respondent did not file a response or answer to the complaint. Upon review of the pleadings, the case was scheduled for an Order to Show Cause Hearing for failure to demonstrate

¹ The hearing was delayed because Respondent appeared late, without good cause.

² The hearing was delayed because Interpreter appeared late, without good cause.

1 subject matter jurisdiction over alleged claims and a failure to state claims upon which relief can
2 be granted.

3 Upon further consideration of matters adduced during the hearing, the undersigned finds
4 that dismissal of the labor case is appropriate.³ First, Complainant does not have lawful
5 authorization to work in the CNMI.⁴ While legal authorization to work does not, in and of itself,
6 prevent a claim for unpaid wages, such claims must be pursued in the CNMI Superior Court.
7 Second, Complainant fails to provide sufficient information to demonstrate a violation of the
8 CNMI Minimum Wage Act, claim for retaliation,⁵ or unlawful termination under applicable
9 CNMI labor laws. The bare allegations that work was not provided or money is owed is
10 insufficient to show a violation of the respective law. Third, any unpaid wages accrued before
11 April 13, 2022 is outside the six-month statute of limitations⁶ and time-barred.

11 III. DISMISSAL OF LABOR CASE & APPEAL RIGHTS

12 Accordingly, pursuant to 3 CMC § 4947(a), this matter is hereby **DISMISSED**, without
13 prejudice. In the event Complainant can overcome the above-stated issues, he may file a new
14 complaint for claims within the applicable statute of limitations.

15 Any person or party aggrieved by this Order may appeal by filing the Notice of Appeal
16 form and filing fee with the Administrative Hearing Office within fifteen (15) days from the date
17 of this Order.⁷

18 ///

19 ///

20 ///

21 ³ During the hearing, the undersigned discussed a partial dismissal. However, upon further review, the undersigned
22 finds that Complainant's lack of authorization to work presents jurisdictional issues that cannot be cured by further
23 investigation.

24 ⁴ The Administrative Hearing Office does not have jurisdiction with respect to the claims of tourists. Those claims
25 are pursued in the Commonwealth Superior Court." NMIAC § 80-20.1-450(e). "It is the intent of the legislature that
26 the [Commonwealth Employment Act of 2007] shall not apply to persons admitted to the Commonwealth as tourists,
27 or to persons employed illegally... it is the intent of the Legislature that . . . illegally employed by prohibited from
28 using the terms of this Act to receive or avail themselves of a legal right or benefit." PL 15-108.

29 ⁵ See NMIAC 80-20.1-455(l).

30 ⁶ 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." See also 4 CMC § 9246. "If a complaint is not timely filed, the hearing office *shall*
dismiss the complaint with prejudice." NMIAC § 80-20.1-465(e). Emphasis added.

⁷ 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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IV. REFERRAL TO ENFORCEMENT

In light of the allegations of unauthorized employment or other labor compliance issues, the clerk is **ORDERED** to copy and transmit the file to Enforcement for further investigation.⁸ In the event that Enforcement finds a labor law violation or compliance issue, Enforcement may initiate a Compliance Agency Case.

So ordered this 9th day of December, 2022.

/s/
JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer

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⁸ Pursuant to 3 CMC § 4940, the Department's Enforcement, Compliance, and Monitoring Section has the authority to conduct investigations as the Department may deem appropriate and necessary to ensure compliance with applicable labor laws. Further, pursuant to NMIAC § 80-20.1-470(a), Enforcement may initiate such investigation as warranted by the allegations, other information provided or available to the Department, and past complaints or violations. Further, investigators may conduct interviews of the parties and others, request documents from the parties, inspect worksites, and undertake such other investigative actions as are warranted. NMIAC § 80-20.1-470(a). Enforcement "may conduct investigations as necessary and appropriate to enforce the provisions of the Commonwealth Employment Act of 2007, as amended, and this subchapter to ensure lawful employment arrangements, payment of wages and overtime, working condition, employer-supplied benefits, and health and safety for employees." NMIAC § 80-20.1-445. In conducting these investigations, Enforcement "shall have all of the powers delegated [under the Employment Rules and Regulations] and the powers to inspect any records that an employer is required to keep, to make copies of records, and to interview employees." *Id.* Depending on the investigation, Enforcement may initiate a consolidated agency action. NMIAC § 80-20.2-455(i).

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 21-0170
)
Alex Y. Gablinez,)
)
Appellant,) ORDER DENYING APPELLANT'S
) REQUEST TO REOPEN AND
v.) RECONSIDER; FINAL AGENCY ACTION
)
CNMI Department of Labor,)
Division of Employment Services-PUA,)
)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on March 10, 2022 at approximately 9:00 a.m. and on April 21, 2022 at approximately 10:00 a.m., both at the Administrative Hearing Office, Saipan Island. On October 20, 2022, the undersigned issued an Administrative Order affirming the Department's Disqualifying Determination, dated October 1, 2021. Specifically, Appellant was found to be ineligible for Pandemic Unemployment Assistance ("PUA") and Federal Pandemic Unemployment Compensation ("FPUC") benefits for the period of May 3, 2020 to September 4, 2021 because Appellant's appeal was not timely filed, Appellant's employment was not affected as a direct result of COVID-19 pandemic, and Appellant was not able and available to work in the CNMI during that period.

On October 26, 2022, Appellant Alex Y. Gablinez ("Appellant") filed a written statement which the undersigned considered a request to reopen. Subsequently, on November 2, 2022, Appellant filed another written statement requesting that the undersigned reverses her decision. In his written statements, Appellant stated that he did not receive the appeal form until October 14, 2021 and then he hand delivered his reply on the next day, October 15, 2021. Appellant also stated in his written statements that he is a "deportee" and that is sufficient to be eligible for PUA and FPUC benefits.

For the reasons stated below, Appellant's request to reopen is hereby **DENIED**.

II. LEGAL STANDARD

PUA and FPUC benefits were intended to support workers directly affected by the COVID-19 pandemic. Pursuant to Hawaii Administrative Rules ("HAR") § 12-5-93(h)-(i), a decision may be

1 reopened by written motion of the parties' or the Administrative Hearing Officer's own motion. If a
2 case is reopened, "the [Administrative Hearing Officer] shall schedule the matter for further hearing
3 and notify the parties to the appeal" HAR § 12-5-93(i). A case can only be reopened once by a
4 particular party. HAR § 12-5-93(j). In the event that an application to reopen is denied or parties have
5 further objections to a subsequent decision, the parties may obtain judicial review. *Id.*

6 III. ANALYSIS

7 Based on the written statements and additional information submitted by the Appellant, the
8 undersigned finds that there is insufficient basis to reopen Appellant's case. First, on the issue of
9 timeliness of Appellant's Appeal, Appellant submitted a copy of a letter he mailed on October 5, 2021
10 to former PUA Coordinator/Adjudicator Maria Annamae Adaza to support his argument that he
11 timely appealed within the 10-calendar deadline. As discussed in the Administrative Order, the
12 Department demonstrated that Appellant was provided with instructions on how to correctly file his
13 appeal. For example, the Determination included instructions on how and to whom to file an appeal.
14 However, here, Appellant mailed his letter to the wrong office, that is, to the former PUA
15 Coordinator/Adjudicator instead of to the Administrative Hearing Office. Moreover, as discussed in
16 the Administrative Order and explained further below, even if a 30-day extension was granted for
17 good cause and/or Appellant's appeal was found to be timely filed, Appellant remains ineligible to
18 receive PUA and FPUC benefits from May 3, 2020 to September 4, 2021 because his unemployment
19 was not a direct result of COVID-19 pandemic and because he was not able and available to work
20 during that time.

21 As discussed in the Administrative Order, payment of PUA and FPUC benefits are available only
22 to "covered individuals", which requires an individual to demonstrate that he or she is unemployed,
23 partially unemployed, or unable or unavailable to work as a direct result of a listed COVID-19 reason
24 in Section 2102(a)(3)(A)(ii) of the CARES Act and the individual must provide required
25 documentation of employment or self-employment within the applicable period. Based on the
26 evidence here and Appellant's written statements, the undersigned does not find Appellant's
27 arguments that he is self-employed persuasive and that his customary work were severely limited or
28 affected directly by COVID-19 pandemic. In addition, Appellant has not provided the required
29 documentation of self-employment within the applicable period and he has not shown how his
30 inability to work was a direct result of any listed COVID-19 reason. Further, while the undersigned
31 recognized that Appellant went through removal proceedings and the proceedings were
administratively closed, it remains that Appellant has not shown that he has lawful employment

1 authorization during the claimed period of May 3, 2020 to September 4, 2021. Appellant appears to
2 argue that simply being a “deportee” with no employment authorization makes him eligible for PUA
3 and FPUC benefits, but this argument is incorrect. As explained in the Administrative Order, in
4 accordance with the CARES Act, an individual must also be able and available to work in the CNMI
5 during the week that benefits are claimed to be considered eligible for benefits. Without any
6 documentation to show that Appellant has authorization to work during the relevant claimed period,
7 Appellant was neither able nor available to work in the CNMI during the claimed week.¹

8 Accordingly, based on the foregoing reasons, it is clear that Appellant was not eligible to receive
9 PUA and FPUC benefits from May 3, 2020 to September 4, 2021 because his unemployment was not
10 a direct result of the COVID-19 pandemic and Appellant was not able and available to work in the
11 CNMI during the claimed period.

12 IV. CONCLUSION

13 In conclusion, Appellant does not provide any new information that justify reopening this case or
14 reversing the undersigned’s decision. Accordingly, based on the applicable law and circumstances of
15 this case, Appellant’s request to reopen is **DENIED**. The Administrative Order, issued on October
16 20, 2022, and this present Order Denying Appellant’s Request to Re-open shall constitute a **FINAL**
17 **AGENCY DECISION**.

18 In the event a party aggrieved by this Order would like to dispute or contest this decision, said
19 party may seek judicial review with the CNMI Superior Court under local Administrative Procedures
20 Act within 30 days of this Order. *See* 1 CMC § 9112. All forms, filings fees, and filing deadlines for
21 judicial review will be as established by the applicable law and court rules.

22 So ordered this 21st day of November, 2022.

23
24 /s/

25 **CATHERINE J. CACHERO**
26 Administrative Hearing Officer
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¹ *See* 43 Com. Reg. 044736 (Jan. 28, 2021); 43 Com. Reg. 045439 (Feb. 28, 2021); 43 Com. Reg. 046852 (June 23, 2021); *see also* HAR §§ 12-5-35(a) and 12-5-35 (b).





COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 22-0203
)
Alex A. Aquiningoc,)
)
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 November 17, 2022 at 9:00 a.m. at the Administrative Hearing Office. Appellant Alex A. Aquiningoc (“Appellant”) failed to appear. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Appellee” or “Department”) was present and represented by PUA Coordinator Emelda Canacho. There were no other witnesses that provided testimony at the hearing.

For the reasons stated below, the Department’s Determination dated February 16, 2022 is **AFFIRMED** and Appellant is not eligible for benefits for the period of May 30, 2021 to June 26, 2021. Also, the Department’s Determination, dated February 18, 2022, is **AFFIRMED** and Appellant is not eligible for benefits for the period of August 1, 2021 to September 4, 2021.

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

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.

1 Workers Act of 2020 (“Continued Assistance Act”) amended and created new provisions of said
2 federal unemployment insurance programs, which, among other things, extended the PUA and
3 FPUC programs to March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021
4 (“ARPA”) extended the programs to September 6, 2021. The CNMI Department of Labor is
5 charged with the responsibility in administering the above-mentioned programs in the CNMI in
6 accordance to applicable law.⁴ The CNMI Department of Labor Administrative Hearing Office
7 has been designated to preside over appeals of agency decisions.

8 Upon review of the records, the appeal is not timely filed. Accordingly, jurisdiction is not
9 established.

10 III. PROCEDURAL BACKGROUND & ISSUES

11 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
12 review of Appellant’s application and supporting documents, the Department issued
13 Disqualifying Determinations on February 16, 2022 and February 18, 2022. On March 11, 2022,
14 Appellant filed this appeal and the matter was scheduled for a hearing. As stated in the Notice of
15 Hearing, the issues on appeal are: (1) whether the appeal is timely filed; (2) whether Appellant is
16 eligible for PUA benefits; and (3) whether an overpayment occurred and funds should be returned.
17 Without good cause, Appellant failed to appear at the scheduled hearing and the hearing continued
18 ex parte.

19 IV. FINDINGS OF FACT

20 In consideration of the evidence provided and credibility of witness testimony, the
21 undersigned issues the following findings of fact:

- 22 1. On or around June 8, 2021, Appellant submitted an initial application⁵ for unemployment
23 assistance under the PUA and FPUC programs administered by the Department. In the
24 initial application,⁶ Appellant self-certified under penalty of perjury that he is self-

25 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for
26 Unemployed Workers Act of 2020” or “Continued Assistance Act”).

27 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
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.

⁵ Exhibit 2.

⁶ *Id.*

1 employed and experienced a significant reduction of services because of the COVID-19
2 public health emergency as of October 1, 2020.

- 3 2. Subsequently, Appellant submitted weekly certifications⁷ to claim continued benefits
4 from week. For week ending June 12, 2021 and June 19, 2021, Appellant reported that his
5 place of employment was closed. For the remaining weekly certifications presented,
6 Appellant reported that he is self-employed⁸ and experienced a significant reduction⁹ of
7 service because of the COVID-19 public health emergency.
- 8 3. On February 16, 2022, the Department issued a disqualifying determination¹⁰ effective
9 May 30, 2021 to June 26, 2021 because Appellant “made more revenue in June 2020 than
10 prior to the pandemic.” On the same day, the Department served the Determination to
11 Appellant through the online portal and notified him by electronic mail.
- 12 4. On February 18, 2022, the Department issued a second disqualifying determination¹¹
13 effective August 1, 2021 to September 4, 2021 for failure to provide a work search record
14 log. On the same day, the Department served the Determination to Appellant through the
15 online portal and notified him by electronic mail.
- 16 5. The determinations, as well as other publications, informed Appellant of the 10-day period
17 to file an appeal.¹²
- 18 6. Appellant filed his appeal after the 10-day deadline, on March 11, 2022.¹³
- 19 7. The Administrative Hearing Office issued a Notice of Hearing¹⁴ advising the parties of
20 the proceedings. The matter was continued¹⁵.
- 21 8. When Appellant failed to appear at the scheduled hearing, the clerk confirmed that
22 Appellant was aware of the hearing, but decided not to show. The hearing continued ex
23 parte.

24 ⁷ Exhibit 3.

25 ⁸ See Exhibit 5.

26 ⁹ See Exhibit 6.

27 ¹⁰ Exhibit 8a.

28 ¹¹ Exhibit 8b.

¹² See Exhibit 1; *see also* Exhibit 8.

¹³ Appellant submitted his appeal electronically on March 10, 2022 at approximately 6:20pm. Since the appeal was submitted after hours, it was considered filed on the next business day.

¹⁴ Exhibit 11a.

¹⁵ Exhibit 11b-c.

9. Based on the available evidence, it is unknown why Appellant filed his appeal more than 10 days after the deadline.

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 not 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.¹⁶ 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.¹⁷

The appeal is untimely. Appellant filed his appeal almost a month after the Determinations were issued. Although the Benefit Rights Information Handbook, various publications, and each determination provided appeal instructions and notice of the ten-day deadline, Appellant failed to act.

Moreover, the evidence provided fails to demonstrate good cause. First, Appellant's appeal filings fail to answer why the appeal is filed after the 10-day deadline. Second, after having sufficient notice of the scheduled hearing, Appellant failed to participate in the hearing.

Accordingly, based on the evidence provided, the appeal was filed late and there is no showing of good cause for an extension. Since the appeal is untimely, the Department's Determinations are final and the Administrative Hearing Office lacks jurisdiction to review the findings.

VI. DECISION

For the reasons stated above, it is ORDERED that:

1. The CNMI Department of Labor's Disqualifying Determination, dated February 16, 2022, is **AFFIRMED**;
2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of May 30, 2021 to June 26, 2021;

///

¹⁶ HI. Rev. Statute § 383-38(a).

¹⁷ HAR § 12-5-81(j).

- 1 3. The CNMI Department of Labor's Disqualifying Determination, dated February 18,
2 2022, is **AFFIRMED**;
3 4. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of August 1,
4 2021 to September 4, 2021.

5 If a party is aggrieved by this Order and would like to contest the decision, he or she must
6 submit a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The
7 written request should be supported by legal, factual, or evidentiary reasons to reopen the
8 decision. The written request must be submitted to the Administrative Hearing Office, either in
9 person at 1357 Mednilla Avenue, Capitol Hill Saipan MP 96950 or via email at
10 hearing@dol.gov.mp.

11 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
12 subsequent hearing. In the event a request to reopen the decision is denied, or if the Appellant
13 still disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI
14 Superior Court under the local Administrative Procedures Act. *See* 1 CMC § 9112. All forms,
15 filings fees, and filing deadlines for judicial review will be as established by the applicable law
16 and court rule.

17 So ordered this **28th** day of November, 2022.

18 /s/

19 **JACQUELINE A. NICOLAS**
20 Chief Administrative Hearing Officer
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List of Admitted Exhibits

1. Exhibit 1: Copy of the Department's Publications;
 - a. Benefit Rights Information Handbook;
 - b. Press Release re: Appeal Instructions (Mvariety, dated 10/15/20);
 - c. Press Release re: Appeal Instructions (Saipan Tribune, dated 10/16/20);
 - d. DOL's Work Search FAQ Publication;
 - e. Press Release re: Work Search Req. (Mvariety, dated 7/22/21);
 - f. Press Release re: Work Search Req. (Saipan Tribune, dated 7/22/21);
2. Exhibit 2: Copy of Appellant's Initial Application, filed June 8, 2021;
3. Exhibit 3: Copy of Appellant's Weekly Certifications;
4. Exhibit 4: Copy of Appellant's U.S. Passport;
5. Exhibit 5: Copy of Appellant's Business Licenses;
 - a. Alex George Aquiningoc AA Construction Ent. (7/16/20-7/16/21)
 - b. Alex George Aquiningoc AA Construction Ent. (7/16/21-7/16/22)
 - c. Alex George Aquiningoc AA Heavy Equipment Rental (7/16/20-7/16/21)
 - d. Alex George Aquiningoc AA Heavy Equipment Rental (7/16/21-7/16/22)
 - e. Alex George Aquiningoc Superior Sanitation Services (7/16/20-7/16/21)
 - f. Alex George Aquiningoc Superior Sanitation Services (7/16/21-7/16/22)
6. Exhibit 6: Copy of Appellant's Business Gross Revenue Tax Returns
7. Exhibit 7: Copy of Department's Request for Work Search Logs;
8. Exhibit 8: Copy of Department's Disqualifying Determinations;
 - a. Determination, dated February 16, 2022;
 - b. Determination, dated February 18, 2022;
9. Exhibit 9: Copy of Department's Email Communication, dated November 7, 2022;
10. Exhibit 10: Copy of Appellant's Request to file an Appeal, filed March 11, 2022;
11. Exhibit 11: Copy of Notices
 - a. Notice of Hearing, issued March 11, 2022;
 - b. Order Continuing Hearing, issued July 8, 2022; and
 - c. Order Continuing Hearing, issued August 9, 2022.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE



In Re Matter of:) PUA Case No. 22-0209
)
Charles Rechesengel)
)
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 November 15, 2022 at 1:30 p.m. and on November 28, 2022 at approximately 10:45 a.m., at the Administrative Hearing Office, Saipan, CNMI. Appellant Charles Rechesengel (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Department”) was present and represented by PUA Coordinator Frank Sablan. Appellant’s wife, Choice Rechesengel (“Mrs. Rechesengel”) provided testimony at the hearing. A list of the documents that were admitted into evidence is added to the end of this Order.

For the reasons stated below, the Department’s Determination, dated March 16, 2022 is **AFFIRMED**. Appellant is not eligible for benefits from August 1, 2021 to September 4, 2021 because Appellant’s appeal is untimely filed and he did not conduct the required work search contacts during the claimed weeks.

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

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.

1 (“Continued Assistance Act”) amended and created new provisions of said federal unemployment
2 insurance programs, which, among other things, extended the PUA and FPUC programs to
3 March 13, 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended
4 the programs to September 6, 2021. The CNMI Department of Labor is charged with the responsibility
5 in administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
6 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
7 appeals of agency decisions.

8 Upon review of the records, Appellant’s appeal of the Determination is not timely filed.
9 Accordingly, jurisdiction is not established.

10 III. PROCEDURAL BACKGROUND & ISSUES

11 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. On
12 March 16, 2022, the Department issued a Disqualifying Determination, effective from August 1, 2021
13 to September 4, 2021. On March 29, 2022, Appellant filed the present appeal and the matter was
14 scheduled for a hearing. As stated in the Notice of Hearing, the issues on appeal are: (1) whether the
15 appeal is timely filed; (2) whether Appellant is eligible for PUA; and (3) whether an overpayment
16 occurred and funds should be returned.

17 IV. FINDINGS OF FACT

18 In consideration of the evidence provided and credibility of witnesses’ testimony, the undersigned
19 issues the following findings of fact:

- 20 1. Prior to the COVID-19 pandemic, Appellant, a Citizen of Freely Associated States, was
21 employed full-time as a Container Comptroller at AM Group LLC (“Employer”), located in
22 Garapan Village, Saipan, CNMI.⁵ Appellant worked 40 or more hours weekly and he was paid
23 \$9.00 hourly.
- 24 2. Due to the impact of the COVID-19 pandemic, Employer furloughed Appellant on March 27,
25 2020⁶ and subsequently laid off Appellant, effective on or around June 1, 2020, 2020.⁷
- 26 3. On or around September 3, 2020, Appellant submitted an initial application⁸ for benefits under
27

28 ³ See Consolidated Appropriations Act, 2021, Division N, Title II, Subtitled A (“Continued Assistance for Unemployed
29 Workers Act of 2020” or “Continued Assistance Act”).

30 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
31 Governor issued Executive Order No. 2020-09 declaring Hawaii Employment Security Law as the applicable state
32 law in the CNMI. Hawaii state law applies, to the extent it does not conflict with applicable federal law and guidance.

⁵ See Exhibits 6-7,

⁶ See Exhibit 7.

⁷ Exhibit 6.

⁸ Exhibit 1.

1 the PUA and FPUC programs administered by the Department.⁹ In his initial application,¹⁰
2 Appellant self-certified under penalty of perjury that:

3 a. Appellant's employment was directly affected by COVID-19 because his place of
4 employment closed as a direct result of COVID-19 pandemic; and

5 b. Appellant's employment was affected since March 27, 2020.¹¹

6 4. Subsequently, Appellant submitted applications¹² to re-open his claim on December 4, 2020
7 and February 20, 2021,¹³ and Appellant filed weekly certifications to claim continued benefits
8 for weeks August 1, 2021 to September 4, 2021.¹⁴

9 5. In all of his applications for federal unemployment benefits, Appellant chose email as his
10 preferred method of service.¹⁵ Additionally, in each of these applications, Appellant
11 acknowledged that it is his responsibility to read the PUA and FPUC Benefit Rights
12 Information Handbook ("BRI Handbook") and any other official written material provided.¹⁶
13 Notably, the BRI Handbook was publicly available throughout the program and included
14 important information regarding program requirements and processes—including appeals
15 process.¹⁷

16 6. Moreover, the Department issued a number of press releases¹⁸ to clarify the appeals process
17 and directed claimants to the BRI Handbook and applicable forms. Additionally, the
18 Department issued a number of press releases¹⁹ to clarify the work search requirement.

19 7. On March 16, 2022, the Department issued and transmitted to Appellant a Disqualifying
20 Determination, effective from August 1, 2021 to September 4, 2021.²⁰ Appellant was
21 disqualified for not meeting the requirement for three work search contacts per claimed
22 week.²¹

23 8. Appellant admitted to receiving the Determination via email, but he could not recall exactly
24
25

26 ⁹ Exhibit 1.

27 ¹⁰ *Id.*

28 ¹¹ *Id.*

29 ¹² *Id.*

30 ¹³ *Id.*

31 ¹⁴ Exhibit 2.

32 ¹⁵ See Exhibit 1.

¹⁶ *Id.*

¹⁷ See Exhibit 9.

¹⁸ See Exhibit 10.

¹⁹ See Exhibits 11-12.

²⁰ Exhibit 3. See also Exhibit 13.

²¹ See Exhibits 3 and 13

1 when he opened and received the email and first read the Determination.

2 9. The Determination provided Appellant with his appeal deadline and instructions on how to
3 appeal.²² Specifically, the Determination provided that:

4 a. Appellant had ten calendar days from the mail date on the Determination to file an
5 appeal and instructions on how to file an appeal; and

6 b. Appellant's appeal of the Determination "**must be received or postmarked by**
7 **03/26/2022**. If you do not make the deadline, you lose the right to appeal this
8 determination."²³

9 10. Appellant did not properly file his Request to Appeal form with the Administrative Hearing
10 Office until March 29, 2022.²⁴

11 11. When asked why his appeal was filed after the deadline, Appellant's only explanation was
12 that he and Mrs. Rechesengel did not open the email on time.

13 12. Upon filing the Appeal, the matter was scheduled for an Administrative Hearing.²⁵

14 13. As discussed during the Administrative Hearing and in his Request to Appeal Form,²⁶
15 Appellant was appealing the Department's Determination because he did not know of the
16 work search requirement.

17 14. Appellant did not conduct any work search contacts for the weeks of August 1, 2021 to
18 September 4, 2021.

19 15. With respect to the overpayment issue, the Department's Benefit Payment Control Unit
20 ("BPC") conducted further review and confirmed that no overpayment occurred in this case.²⁷

21 V. CONCLUSIONS OF LAW

22 In consideration of the above-stated findings and applicable law, the undersigned issues the
23 following conclusions of law:

24 1. Appellant's appeal is not timely filed.

25 Generally, an appeal should be filed within ten days after the Notice of Determination was issued
26 or served to the claimant. However, the Department may extend the period to thirty days by a showing
27 of good cause.²⁸ Good cause means: (1) illness or disability; (2) keeping an appointment for a job
28

29 _____
30 ²² Exhibit 3.

31 ²³ *Id.* (emphasis in original).

32 ²⁴ Exhibit 4.

²⁵ See Exhibit 5.

²⁶ Exhibit 5.

²⁷ See Exhibit 8.

²⁸ HI. Rev. Statute § 383-38(a).

1 interview; (3) attending a funeral of a family member; and (4) any other reason which would prevent
2 a reasonable person from complying as directed.²⁹

3 Here, the Department issued and transmitted the Determination on March 16, 2022 via the NMI
4 PUA portal and email.³⁰ Appellant admitted to receiving the Determination via email, but he could
5 not recall exactly when he opened and received the email and first read the Determination. The
6 Determination clearly stated the 10-calendar day deadline and stated that the appeal “**must be**
7 **received or postmarked by 03/26/2022.** If you do not make the deadline, you lose the right to appeal
8 this determination.” (Emphasis in original).³¹ When asked why his appeal was filed after the deadline,
9 Appellant’s only explanation was that he and Mrs. Rechesengel did not open the email on time.

10 As demonstrated by the Department, Appellant was provided with instructions on how to file his
11 appeal through multiple avenues. Specifically, appeal instructions could be found in the Appellant’s
12 Determination, the appeal form, the BRI Handbook, and multiple press releases and newspaper
13 articles. Moreover, when Appellant filed his applications for unemployment benefits, starting with his
14 initial application on or around September 3, 2020, Appellant acknowledged that it is his
15 responsibility to read the BRI Handbook and any other official, published written material provided.³²

16 Ultimately, the undersigned finds that Appellant failed to act within the 10-day deadline as
17 required. Moreover, the undersigned finds that Appellant failed to justify good cause for an extension
18 of the 10-day deadline. In his applications for benefits, Appellant selected email as his preferred
19 method of service.³³ Generally, the failure to check and review emails and the failure to read and
20 follow instructions are not good cause for extension of the 10-day deadline. Accordingly, Appellant’s
21 appeal was not timely filed. Since Appellant’s appeal was untimely, the Department’s Determination
22 is final, the undersigned has no jurisdiction, and the latter issues are moot. Even if there were good
23 cause to extend the 10-day deadline, Appellant remains ineligible to receive benefits for the period of
24 August 1, 2021 to September 4, 2021 because of the reasons discussed below.

25 **2. Appellant was not able and available to work in the CNMI from August 1, 2021 to**
26 **September 4, 2021.**

27 In accordance with the CARES Act, an individual must be able and available to work in the CNMI
28 during the week that benefits are claimed. “An individual shall be deemed able and available for work
29

30
31 ²⁹ HAR § 12-5-81(j).

32 ³⁰ Exhibit 3.

³¹ *Id.*

³² See Exhibit 1.

³³ See Exhibit 1.

1 . . . if the individual is able and available for suitable work during the customary work week of the
2 individual's customary occupation which falls within the week for which a claim is filed.”³⁴ “An
3 individual shall be deemed *able* to work if the individual has the physical and mental ability to perform
4 the usual duties of the individual’s customary occupation or other work for which is the individual is
5 reasonably fitted by training and experience.”³⁵ “An individual shall be deemed *available* for work
6 only if the individual is ready and willing to accept employment for which the individual is reasonably
7 fitted by training and experience. The individual must intend and wish to work, and there must be no
8 undue restrictions either self-imposed or created by force of circumstances which prevent the
9 individual from accepting employment.”³⁶

10 Effective June 13, 2021, Hawaii reinstated the work search requirement for all PUA claimants.
11 Specifically, “[a]n individual may be considered *available* for work any week in which the individual
12 has met the work search requirement.”³⁷ Because the CNMI follows Hawaii state law with respect to
13 unemployment benefits, CNMI claimants must “make a minimum of three work search contacts each
14 week, unless³⁸ otherwise provided” to demonstrate availability.³⁹ With respect to work search
15 contacts, “the [claimant] shall maintain a record of all work search contacts and may be required to
16 submit such records upon request by the Department.”⁴⁰

17 Activities that are considered “work search contacts” include: (1) registering for work at the
18 Department, other employment agency, or work placement program; (2) apply for work, submitting
19 resumes, or interviewing with potential employers; (3) attending job search seminars or relevant
20 employment seminars; or (4) other similar work search activities which are generally made by
21 individuals in a similar occupation who are genuinely interested in obtaining work.⁴¹ Ultimately, a
22 claimant who fails to make a minimum of three work search contacts each week is not available for
23 work and may be held ineligible for benefits.⁴²

24 Here, based on the documentation and testimony provided, the undersigned finds that the
25 Department provided Appellant and all other claimants with information and instructions on the
26 requirement for work search contacts. As discussed above, it is Appellant’s responsibility to be
27

28 ³⁴ HAR § 12-5-35(a)

29 ³⁵ HAR § 12-5-35(a)(1) (emphasis added).

30 ³⁶ HAR § 12-5-35(a)(2) and (b) (emphasis added).

31 ³⁷ HAR § 12-5-35(c).

32 ³⁸ See HAR §12-5-35(c)(4).

³⁹ HAR §12-5-35(c)(1).

⁴⁰ HAR §12-5-35(c)(2).

⁴¹ HAR §12-5-35(c)(3).

⁴² HAR §12-5-35(c)(5).

1 informed about the program by reading the PUA and FPUC Benefits Rights Information Handbook
2 and other official written materials regarding the program, including press releases and newspaper
3 articles regarding the work search requirements. Appellant admitted several times during his
4 testimony that he did not conduct any work search contacts for the weeks of August 1, 2021 to
5 September 4, 2021 because he was not aware of the requirement until early in 2022, which is months
6 after the requirement was reinstated. Ultimately, based on the evidence presented and testimony
7 available, including Appellant's own admission that he did not know about the requirement and he
8 did not conduct the required work search contacts, the undersigned finds that Appellant was not able
9 and available to work for the period of August 1, 2021 to September 4, 2021.

10 VI. DECISION

11 For the reasons stated above, it is ORDERED that:

- 12 1. The CNMI Department of Labor's Disqualifying Determination, dated March 16, 2022, is
13 **AFFIRMED**; and
14 2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits from August 1, 2021 to
15 September 4, 2021.

16 If a party is aggrieved by this Order and would like to contest the decision, he or she must submit
17 a written request to reopen the decision pursuant to Hawaii Admin. Rule § 12-5-93. The written
18 request should be supported by legal, factual, or evidentiary reasons to reopen the decision. The
19 written request must be submitted to the Administrative Hearing Office, either in person at Building
20 #1357, Mednilla Avenue, Capitol Hill, Saipan, CNMI or via email at hearing@dol.gov.mp.

21 In the event a request to reopen the decision is granted, the matter shall be scheduled for a
22 subsequent hearing. In the event a request to reopen the decision is denied, and if the Appellant still
23 disagrees with a subsequent decision, the Appellant may seek judicial review with the CNMI Superior
24 Court under the local Administrative Procedures Act within 30 days. *See* 1 CMC § 9112. All forms,
25 filings fees, and filing deadlines for judicial review will be as established by the applicable law and
26 court rule.

27 So ordered this 1st day of December, 2022.

28 /s/

29 **CATHERINE J. CACHERO**
30 Administrative Hearing Officer
31
32

List of Documents Admitted into Evidence

The following documents were admitted into evidence:

1. Exhibit 1: Copies of Appellant's Application Snapshot (new, filed on September 3, 2020), Application Snapshot (re-open, filed on December 4, 2020), and Application Snapshot (re-open, filed on February 20, 2021);
2. Exhibit 2: Copies of Appellant's Weekly Certifications for the period from August 1, 2021 to September 4, 2021;
3. Exhibit 3: Copy of the Disqualifying Determination, dated March 16, 2022;
4. Exhibit 4: Copy of Appellant's Request to File an Appeal and supporting documents, filed on March 29, 2022;
5. Exhibit 5: Copies of the Notice of Hearing (issued on March 30, 2022) and Orders Continuing Hearing (issued on April 5, 2022, August 4, 2022, October 19, 2022, and November 15, 2022);
6. Exhibit 6: Copies of Notice of Employment Termination from Appellant's former Employer AM Group LLC, dated June 01, 2020 (effective immediately);
7. Exhibit 7: Copy of Appellant's Notarized Self Verification, dated July 26, 2021;
8. Exhibit 8: Copy of Department's Benefit Payment Control Unit's Email Communication, dated November 7, 2022;
9. Exhibit 9: Copy of Pandemic Unemployment Assistance and Federal Pandemic Unemployment Compensation Benefit Rights Information Handbook;
10. Exhibit 10: Copies of Newspaper Articles regarding the PUA Appeals Process, posted on *Saipan Tribune* (October 16, 2020) and *Marianas Variety* (October 15, 2020);
11. Exhibit 11: Copy of Department's Press Release, FAQ: PUA Work Search Requirement;
12. Exhibit 12: Copy of Newspaper Articles regarding the Work Search Requirement, posted on *Marianas Variety* and *Saipan Tribune* on July 22, 2021; and
13. Exhibit 13: Copy of Department's Case Note, dated March 16, 2022.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) PUA Case No. 22-0213
Juan Ramil C. Anzano,)
Appellant,)
v.) ADMINISTRATIVE ORDER
CNMI Department of Labor,)
Division of Employment Services-PUA,)
Appellee.)

I. INTRODUCTION

This matter came before the undersigned for an Administrative Hearing on December 13, 2022 at approximately 9:00 a.m. at the Administrative Hearing Office, Saipan, CNMI. Appellant Juan Ramil C. Anzano (“Appellant”) was present and self-represented. Appellee CNMI Department of Labor Division of Employment Services – Pandemic Unemployment Assistance program (“Department”) was present and represented by PUA Coordinator Emelda Camacho. Appellant’s wife, Trinnah Rose Anzano, provided testimony. The list of documents at the end of this Order were admitted into evidence.

For the reasons stated below, the Department’s Determination dated April 14, 2022 is **AFFIRMED**. Appellant is not eligible for benefits for the period of December 27, 2020 to September 4, 2021.

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

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.

1 insurance programs, which, among other things, extended the PUA and FPUC programs to March 13,
2 2021.³ On March 11, 2021, the American Rescue Plan Act of 2021 (“ARPA”) extended the programs
3 to September 6, 2021. The CNMI Department of Labor is charged with the responsibility in
4 administering the above-mentioned programs in the CNMI in accordance to applicable law.⁴ The
5 CNMI Department of Labor Administrative Hearing Office has been designated to preside over
6 appeals of agency decisions.

7 Upon review of the records, the Appellant’s appeal is timely filed. Accordingly, jurisdiction is
8 established.

9 III. PROCEDURAL BACKGROUND & ISSUES

10 Appellant filed a claim for unemployment benefits under the PUA and FPUC programs. Upon
11 review of Appellant’s application and supporting documents, the Department issued a Disqualifying
12 Determination on April 14, 2022. On April 21, 2022, within the ten-day calendar deadline, Appellant
13 filed the present appeal and the matter was scheduled for an Administrative Hearing. As stated in the
14 Notice of Hearing, the issues on appeal are: (1) whether Appellant is eligible for PUA; and (2) whether
15 an overpayment occurred and funds should be returned.

16 IV. FINDINGS OF FACT

17 In consideration of the evidence provided and credibility of witness testimony, the undersigned
18 issues the following findings of fact:

- 19 1. Prior to the COVID-19 pandemic, Appellant, a Citizen of the Republic of the Philippines,⁵
20 was hired for a full-time position as a Customer Service by FM Corporation, doing business
21 at Intellisoft (“Employer”), located in Saipan, CNMI.⁶ Appellant was to be paid an hourly rate
22 of \$8.80.⁷
- 23 2. In the midst of the global COVID-19 pandemic, Appellant relocated from the Philippines to
24 the CNMI on or around July 4, 2020 to start working for Employer.
- 25 3. Due to the economic impact of the pandemic, Employer implemented cost-cutting measures
26
27

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.

⁵ Exhibit 6.

⁶ See Exhibit 5.

⁷ Exhibit 5.

1 that affected Appellant's employment.⁸ Specifically, effective July 4, 2020, Appellant was
2 furloughed by Employer.⁹ Appellant was never recalled to work, and he was eventually laid
3 off by Employer.

4 4. On or around April 12, 2022, Appellant submitted an application¹⁰ for unemployment
5 assistance under the PUA and FPUC programs administered by the Department.¹¹ In the
6 application,¹² Appellant self-certified under penalty of perjury that:

- 7 a. Appellant is an Alien/Refugee Lawfully Admitted to U.S.;
- 8 b. Appellant's hours were reduced or he was laid off as a direct result of the COVID-19
9 public health emergency; and
- 10 c. Appellant's employment was affected since July 4, 2020.¹³

11 5. With respect to Appellant's immigration status and employment authorization, Appellant
12 provided testimony and substantiating evidence to demonstrate that he had the following legal
13 status:

- 14 a. Appellant had a CW-1 visa, valid from February 21, 2020 to September 30, 2020;¹⁴
- 15 b. Appellant subsequently applied to adjust his status to E2 classification and applied for
16 an employment authorization under this category, on or around August 13, 2020;¹⁵ his
17 application was approved and he had a valid E2 visa from May 12, 2021 to
18 November 29, 2021;¹⁶
- 19 c. Currently, Appellant has an E2 visa that is valid from October 26, 2021 to
20 October 24, 2026;¹⁷ and
- 21 d. Appellant has no other documents or evidence to demonstrate that he had any other
22 legal status during the relevant claim period.

23 6. The Department reviewed Appellant's application for unemployment benefits, including
24 supporting documents. On April 12, 2022, the Department entered Appellant's information
25 into the Systematic Alien Verification for Entitlements (SAVE) database maintained by
26

27 ⁸ Exhibit 5.

28 ⁹ *Id.*

¹⁰ Exhibit 1.

¹¹ *See id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Exhibit 8; *see also* Exhibit 7.

¹⁵ *See* Exhibits 15-16.

¹⁶ Exhibit 9.

¹⁷ Exhibit 10.

USCIS, Verification Division.¹⁸ This database is used to determine the immigration status of PUA applicants so that only those entitled to benefits receive benefits. The SAVE results confirmed that Appellant is an E2 visa holder.¹⁹

7. On April 14, 2022, the Department issued a determination disqualifying Appellant from PUA and FPUC benefits effective December 27, 2020 to September 4, 2021 because Appellant is not a US Citizen, Non-citizen National, or a Qualified Alien during the claim period.²⁰

8. On April 21, 2022, Appellant filed the present appeal of the Determination²¹ and the matter was scheduled for an Administrative Hearing.²²

9. Through supporting documents from the Department's Benefit Payment Control Unit and Department's testimony during the Administrative Hearing, the Department confirmed there was no overpayment issue because Appellant has not received any unemployment benefits.²³

V. CONCLUSIONS OF LAW

In consideration of the above-stated findings and applicable law, the undersigned issues the following conclusions of law:

1. Appellant is not a qualified alien.

PUA and FPUC are federal public benefits as defined by 8 USC §1611(c). As a condition of eligibility for any federal public benefit, the claimant must be a "qualified alien" at the time 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
8. An alien who (or whose child or parent) has been battered or subject to extreme cruelty in the U.S. and otherwise satisfies the requirements of § 431(c) of the Act.

¹⁸ Exhibit 11.

¹⁹ Exhibit 11.

²⁰ Exhibit 2.

²¹ Exhibit 3.

²² See Exhibit 4.

²³ See Exhibit 13.

1 Further, Section 265 of the Continued Assistance Act provides that a Commonwealth Only
2 Transitional Worker (CW-1) shall be considered a qualified alien for purposes of eligibility under the
3 PUA and FPUC programs. As provided in UIPL 16-20, change 4, page I-16, "CW-1 workers may
4 receive PUA and FPUC if they meet all PUA eligibility requirements beginning with claims filed after
5 December 27, 2020 (*i.e.*, claim effective dates beginning on or after January 3, 2021)."

6 Here, the Department disqualified Appellant from PUA and FPUC from December 27, 2020 to
7 September 4, 2021 because the Department found that Appellant was not a US Citizen, Non-citizen
8 National, or a Qualified Alien for the claim period that he applied for benefits.²⁴ When Appellant
9 moved to the CNMI on July 4, 2020, Appellant had a CW-1 visa that was valid from February 21,
10 2020 to September 30, 2020 to work for employer and petitioner F M Corporation.²⁵ Subsequently, on
11 or around August 13, 2020, Appellant submitted an application to change his immigration status to
12 E2 (Form I-539) with corresponding application for employment authorization (Form I-765).²⁶
13 Appellant's E2 visa was approved, valid from May 12, 2021 to November 29, 2021.²⁷ Appellant's E2
14 was extended, currently valid from October 26, 2021 to October 24, 2026.²⁸ Appellant argued that
15 because he applied to change his status to E2 before the expiration of his CW-1, he could remain in
16 the CNMI. However, Appellant admitted that during the relevant claim period, after his CW-1 expired
17 to the date that his first E2 visa was approved (*i.e.*, from October 1, 2020 to May 11, 2021), Appellant
18 neither had legal status nor legal authorization to work. In addition, Appellant testified that he did not
19 have any other documents or evidence of any other legal status or legal authorization to work during
20 this claim period. Additionally, as an E2 visa holder from May 12, 2021 to September 4, 2021,
21 Appellant was not a qualified alien at that time and was ineligible to receive unemployment benefits.
22 Accordingly, the undersigned finds that from December 27, 2020 to September 4, 2021, Appellant
23 was not a qualified alien, and therefore, he was not eligible to receive PUA and FPUC benefits.

24 VI. DECISION

25 For the reasons stated above, it is ORDERED that:

- 26 1. The CNMI Department of Labor's Disqualifying Determination dated April 14, 2022 is
27 **AFFIRMED**; and

28

²⁴ Exhibit 2; *see also* Exhibit 12.

²⁵ Exhibit 8.

²⁶ *See* Exhibits 15-16.

²⁷ Exhibit 9.

²⁸ Exhibit 10.

2. The Appellant is **NOT ELIGIBLE** to receive PUA benefits for the period of December 27, 2020 to September 4, 2021.

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 December, 2022.

/s/

CATHERINE J. CACHERO
Administrative Hearing Officer

Lists of Documents Admitted Into Evidence

1. Exhibit 1: Copy of the Appellant's Application Snapshot, dated April 12, 2022;
2. Exhibit 2: Copy of the Department's Disqualifying Determination, dated April 14, 2022;
3. Exhibit 3: Copy of Appellant's Request to File an Appeal and supporting documents, filed April 21, 2022;
4. Exhibit 4: Copy of Notice of Hearing, issued April 21, 2022;
5. Exhibit 5: Copy of Appellant's Employment Certification from FM Corporation, issued September 30, 2021;
6. Exhibit 6: Copy of Appellant's Philippine Passport;
7. Exhibit 7: Copy of Form I-797A, Approval Notice for CW-1, valid from January 28, 2020 to September 30, 2020;
8. Exhibit 8: Copy of Appellant's CW-1 visa, valid from February 21, 2020 to September 30, 2020;
9. Exhibit 9: Copy of Form I-797A, Approval Notice for E2, valid from May 12, 2021 to November 29, 2021;
10. Exhibit 10: Copy of Appellant's E2 visa, valid from October 26, 2021 to October 24, 2026;
11. Exhibit 11: Copy of Department's SAVE Verification Result, initiated April 12, 2022;
12. Exhibit 12: Copy of Department's Case Note, dated April 21, 2022;
13. Exhibit 13: Copy of Department Benefit Payment Control Unit's Email; dated December 6, 2022;
14. Exhibit 14: Copy of Department's Benefit Rights Information Handbook;
15. Exhibit 15: Copy of Form I-797C, Receipt Notice for Form I-539, dated August 20, 2020; and
16. Exhibit 16: Copy of Form I-797C, Receipt Notice, for Form I-765, dated August 20, 2020.



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re the Matter of:

Norlita T. Ordonio,

Appellant,

v.

CNMI Department of Labor,
Division of Employment Services-DUA,
Appellee.

DUA Case No. 22-016

ADMINISTRATIVE ORDER

On November 29, 2022, the Department filed a Motion to Dismiss stating that the Department issued a Determination finding Appellant eligible and resolving all the issues in the case. On the same day, Appellant, by and through counsel, filed a Stipulation to Dismissal.

In consideration of above, the undersigned finds that there are no issues on appeal and dismissal is appropriate. Accordingly, this appeal is hereby **DISMISSED** and the Administrative Hearing scheduled for November 30, 2022 is hereby **VACATED**.

So ordered this 29th day of November, 2022.

/s/

JACQUELINE A. NICOLAS
Chief Administrative Hearing Officer



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
DEPARTMENT OF LABOR
ADMINISTRATIVE HEARING OFFICE

In Re Matter of:) Enforcement Investigation No. 22-008-03
) Compliance Agency Case No. 22-010
Department of Labor, Enforcement and)
Compliance,)
)
Complainant,) ORDER AND JUDGMENT
v.)
)
Mohammed Ayub Ali,)
)
Respondent.)

I. INTRODUCTION

This matter came for an Administrative Hearing on December 1, 2022 at 9:00 a.m. at the Administrative Hearing Office in Saipan. Complainant CNMI Department of Labor, Enforcement, Monitoring, and Compliance Section ("Enforcement") was present and represented by Labor Law Enforcement Specialist III Arlene Rafanan. Respondent Mohammed Ayub Ali ("Respondent") was presented and self-represented. Interpreter Mohammad Ahmed facilitated communications during the Administrative Hearing.

II. BACKGROUND

On April 7, 2022, Enforcement initiated the above-captioned compliance agency case and the matter was scheduled for a hearing. On August 23, 2022, Enforcement filed an Amended Determination and Notice of Violation. In support of Enforcement's Amended Determination, Enforcement included 14 supporting documents or proposed exhibits.¹ Based on the filings, Enforcement alleges the following claims and violations:

1. Failure to maintain and submit required records pursuant to 3 CMC § 4967;
2. Unauthorized employment in violation of 3 CMC § 4963;
3. Failure to post a job vacancy announcement in violation of 3 CMC § 4522; and
4. A violation of the employment preference requirement under 3 CMC § 4521.

¹ Enforcement's Amended Determination and Exhibits are hereby incorporated into this Order and Judgment.

1 During the Administrative Hearing, Respondent did not object to any of allegations or
2 proposed exhibits. Upon full notice of the allegations and an opportunity to respond, Respondent
3 confirmed and admits to each violation.

4 III. JUDGMENT

5 Accordingly, **JUDGMENT** is hereby entered against Respondent.

- 6 1. Respondent committed one violation for failure to maintain and submit required records
7 pursuant to 3 CMC § 4967;
- 8 2. Respondent committed eight violations for unauthorized employment in violation of 3
9 CMC § 4963;
- 10 3. Respondent committed eight violations for failure to post a job vacancy announcement in
11 violation of 3 CMC § 4522; and
- 12 4. Respondent committed eight violations for a violation of the employment preference
13 requirement under 3 CMC § 4521.

14 Pursuant to 3 CMC §4964 and NMIAC § 80-20.1-485(c), Respondent is **SANCTIONED**
15 \$2,000 for each violation, a total of \$50,000, all suspended except \$8,000. Respondent is
16 **ORDERED** to pay the entire sanction of \$8,000 in monthly installments of at least \$500.00, on
17 or before the 15th of each month, beginning January 2023. Monthly payments shall continue until
18 the imposed sanction is fully paid. Payment may be made by check or money order to the CNMI
19 Treasury. A receipt or other proof of payment must be promptly submitted to the Administrative
20 Hearing Office by the due date of each payment.

21 The amount of \$42,000 is **SUSPENDED** provided that Respondent satisfied all the following
22 conditions:

- 23 1. Respondent timely pays the above-mentioned sanctions; and
- 24 2. Respondent commits no further violations of CNMI labor laws and regulations for a
25 period of one (1) year after payment of the sanction is complete.

26 Enforcement is **ORDERED** to monitor the terms and conditions of Respondent's suspended
27 sanction and may file a request to reopen this case should Respondent fail to comply. In that
28 event, Respondent shall be subject to a reinstatement of all or part of the suspended sanction
without the need for an additional hearing.

///

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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.

4 So ordered this 9th day of December, 2022.

5 /s/

6 **JACQUELINE A. NICOLAS**
7 Chief Administrative Hearing Officer
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COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. 2022-12

SUBJECT: RENEWAL OF DECLARATION OF STATE OF PUBLIC HEALTH EMERGENCY AND CONTINUED DECLARATION OF STATE OF SIGNIFICANT EMERGENCY ESTABLISHING RESPONSE, QUARANTINE, AND PREVENTIVE CONTAINMENT MEASURES CONCERNING CORONAVIRUS DISEASE 2019 (COVID-19); AND,

RENEWAL OF ORDER DIRECTING THE CNMI HOMELAND SECURITY & EMERGENCY MANAGEMENT OFFICE, THROUGH THE CNMI COVID-19 TASK FORCE, AND IN PARTNERSHIP WITH THE COMMONWEALTH HEALTHCARE CORPORATION, TO UNDERTAKE NECESSARY COVID-19 CONTAINMENT MEASURES BY MEANS OF THE DEVELOPMENT OF EMERGENCY DIRECTIVES TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a novel virus that is the cause of severe acute respiratory illness. It was first detected in Wuhan, Hubei Province, People's Republic of China in December of 2019. As of August 7, 2022, more than 584 million cases of COVID-19 have been reported world-wide resulting in more than 6.41 million deaths.

WHEREAS, COVID-19 is a highly contagious disease that can lead to serious illness and death, especially for the elderly and people who have underlying medical conditions. The potential pandemic impact of COVID-19 on the vulnerable population of the Commonwealth cannot be understated. Vaccines and treatments are available but measures such as isolation and containment are still important tools in the fight against COVID-19 and need to be available for use by health officials. Action is necessary to protect the health and safety of our senior citizens, medically vulnerable, and all other CNMI residents and visitors.

WHEREAS, COVID-19, through its variants, continues to pose a significant and imminent threat of harm to the community, environment and people of the CNMI. As recently as June-July, a wave of COVID-19 infections spread through the community. An emergency declaration is still needed to ensure the containment of COVID-19 in the CNMI.

WHEREAS, the United States Department of Health and Human Services renewed its public health emergency on July 15, 2022 for a 90-day period indicating that federal public health officials still see COVID-19 as a threat to public health.

WHEREAS, by renewing the Declaration of State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, and by renewing Executive Order 2020-07, I intend to direct the Commonwealth Healthcare Corporation ("CHCC"), the CNMI Homeland Security & Emergency Management Office (HSEMO) and all other necessary Commonwealth agencies to undertake containment measures as necessary to meet the threat of COVID-19.

NOW THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution, the Homeland Security and Emergency Management Act of 2013, 1 CMC § 20144, and the CNMI Emergency Health Powers Act of 2003, 3 CMC §§ 2181-2195, do hereby declare a State of Public Health Emergency and State of Significant Emergency for the entire Commonwealth of the Northern Mariana Islands due to the imminent threat posed by COVID-19 and order the following:

(A) Renewal of Executive Order 2020-04:

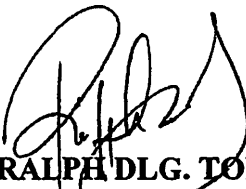
- (1) The Declaration of a State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, is hereby renewed and shall thus continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-04, as amended, shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-04, as amended, shall remain in effect for thirty (30) days from the date of this Executive Order.

(B) Renewal of Executive Order 2020-07:

- (1) Executive Order 2020-07, which ordered the CNMI Homeland Security & Emergency Management Office, through the CNMI COVID-19 Task Force in partnership with the Commonwealth Healthcare Corporation, to undertake necessary COVID-19 containment measures by means of the development of emergency directives to protect the health and safety of the public, is hereby renewed and shall continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-07 shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-07 shall remain in effect for thirty (30) from the date of this Executive Order.

This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the CNMI, its departments, agencies, its officers, employees, or agents, or any other person.

SIGNED AND PROMULGATED ON THIS 8th day of August, 2022



RALPH DLG. TORRES
GOVERNOR



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. 2022-13

SUBJECT: RENEWAL OF DECLARATION OF MAJOR DISASTER AND STATE OF SIGNIFICANT EMERGENCY ARISING FROM THE BURNING OF THE SUPER TYPHOON WASTE AND DEBRIS SITE ON THE ISLAND OF TINIAN

WHEREAS, on or about June 19, 2022, a grass fire started on the island of Tinian. This fire spread and grew in intensity until it reached a location where waste and debris from Super Typhoon Yutu was being sorted and stored for disposal. Much of the waste and debris stored at the site included "white good" waste, e-waste, tires, batteries and other debris that contained toxic chemicals dangerous or otherwise unhealthy for humans.

WHEREAS, upon reaching the Super Typhoon waste and debris storage site, much of the waste and debris was consumed by fire.

WHEREAS, the burning of the waste and debris has potentially released toxic chemicals into the ground where it may seep into Tinian's aquifer if it is not cleaned up and disposed of in a timely manner. The aquifer is the sole source of Tinian's drinking water and contamination of the aquifer would threaten the public health and welfare of the people of Tinian. This threat cannot be understated. Immediate action is necessary to protect the health and safety of the people of Tinian.

WHEREAS, such threat to the people of Tinian and their health necessitates an organized response by a public, private, and government entities to protect life, public health and safety.

WHEREAS, the Office of the Governor has consulted with the CNMI Homeland Security & Emergency Management Office and other agencies, and believes a renewal of the declaration of major disaster and a state of significant emergency is warranted.

WHEREAS, authorizing the Secretary of Finance to be able to access, reprogram or transfer funds from accounts of Executive Branch departments and agencies, including autonomous or independent entities, in order to fund the containment, mitigation, and remediation of the threat to the health and welfare of the people of Tinian is a reasonably necessary response in order to ensure that the government is able to meet the threat.

NOW THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution, the Homeland Security and Emergency Management Act of 2013, 1 CMC § 20144, do hereby declare a Major Disaster and State of Significant Emergency for the island of Tinian due to the threat posed by toxic chemicals to the people of Tinian caused by the burning of the Super Typhoon Yutu waste and debris site:

Additionally, I hereby invoke my authority under Article III, § 10 of the Commonwealth Constitution and the Homeland Security and Emergency Management Act of 2013, 1 CMC § 20144, to take all necessary measures to address the threat facing the people of the island of Tinian.

Further, under the authority of this Declaration and with the goal of mitigating and ameliorating the above described threat, I immediately direct the following:

1. The Declaration of Major Disaster and State of Significant Emergency embodied in Executive Order 2022-09, as amended, is hereby renewed and shall thus continue for an additional thirty (30) days from the effective date.

2. This renewal of Executive Order 2022-09, as amended, is effective immediately and shall remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2022-09, as amended, shall remain in effect for thirty (30) days from the date of this Executive Order.

This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the CNMI, its departments, agencies, its officers, employees, or agents, or any other person.

SIGNED AND PROMULGATED ON THIS 23rd day of August, 2022



RALPH DLG. TORRES
GOVERNOR



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. 2022-14

SUBJECT: RENEWAL OF DECLARATION OF STATE OF PUBLIC HEALTH EMERGENCY AND CONTINUED DECLARATION OF STATE OF SIGNIFICANT EMERGENCY ESTABLISHING RESPONSE, QUARANTINE, AND PREVENTIVE CONTAINMENT MEASURES CONCERNING CORONAVIRUS DISEASE 2019 (COVID-19); AND,

RENEWAL OF ORDER DIRECTING THE CNMI HOMELAND SECURITY & EMERGENCY MANAGEMENT OFFICE, THROUGH THE CNMI COVID-19 TASK FORCE, AND IN PARTNERSHIP WITH THE COMMONWEALTH HEALTHCARE CORPORATION, TO UNDERTAKE NECESSARY COVID-19 CONTAINMENT MEASURES BY MEANS OF THE DEVELOPMENT OF EMERGENCY DIRECTIVES TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a novel virus that is the cause of severe acute respiratory illness. It was first detected in Wuhan, Hubei Province, People's Republic of China in December of 2019. As of August 7, 2022, more than 603 million cases of COVID-19 have been reported world-wide resulting in more than 6.49 million deaths.

WHEREAS, COVID-19 is a highly contagious disease that can lead to serious illness and death, especially for the elderly and people who have underlying medical conditions. The potential pandemic impact of COVID-19 on the vulnerable population of the Commonwealth cannot be understated. Vaccines and treatments are available but measures such as isolation and containment are still important tools in the fight against COVID-19 and need to be available for use by health officials. Action is necessary to protect the health and safety of our senior citizens, medically vulnerable, and all other CNMI residents and visitors.

WHEREAS, COVID-19, through its variants, continues to pose a significant and imminent threat of harm to the community, environment and people of the CNMI. As recently as June-July of this year, a wave of COVID-19 infections spread through the community. An emergency declaration is still needed to ensure the containment of COVID-19 in the CNMI.

WHEREAS, as the CNMI continues to open up its economy to tourism from Asia markets, the chance of COVID-19 once again spreading in the community is heightened.

WHEREAS, the United States Department of Health and Human Services renewed its public health emergency on July 15, 2022 for a 90-day period indicating that federal public health officials still see COVID-19 as a threat to public health.

WHEREAS, the Office of the Governor has consulted with the CNMI Homeland Security & Emergency Management Office and the COVID-19 Task Force and believes renewals of EO 2020-04, as amended, and EO 2020-07 are warranted.

WHEREAS, by renewing the Declaration of State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, and by renewing Executive Order 2020-07, I intend to direct the Commonwealth Healthcare Corporation, the CNMI Homeland Security & Emergency Management Office and all other necessary Commonwealth agencies to undertake containment measures as necessary to meet the threat of COVID-19.

NOW THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution, the Homeland Security and Emergency Management Act of 2013, 1 CMC § 20144, and the CNMI Emergency Health Powers Act of 2003, 3 CMC §§ 2181-2195, do hereby declare a State of Public Health Emergency and State of Significant Emergency for the entire Commonwealth of the Northern Mariana Islands due to the imminent threat posed by COVID-19 and order the following:

(A) Renewal of Executive Order 2020-04:

- (1) The Declaration of a State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, is hereby renewed and shall thus continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-04, as amended, shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-04, as amended, shall remain in effect for thirty (30) days from the date of this Executive Order.

(B) Renewal of Executive Order 2020-07:

- (1) Executive Order 2020-07, which ordered the CNMI Homeland Security & Emergency Management Office, through the CNMI COVID-19 Task Force in partnership with the Commonwealth Healthcare Corporation, to undertake necessary COVID-19 containment measures by means of the development of emergency directives to protect the health and safety of the public, is hereby renewed and shall continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-07 shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-07 shall remain in effect for thirty (30) from the date of this Executive Order.

This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the CNMI, its departments, agencies, its officers, employees, or agents, or any other person.

SIGNED AND PROMULGATED ON THIS 8th day of September, 2022


RALPH DLG. TORRES
GOVERNOR



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. 2022-15

SUBJECT: RENEWAL OF DECLARATION OF STATE OF PUBLIC HEALTH EMERGENCY AND CONTINUED DECLARATION OF STATE OF SIGNIFICANT EMERGENCY ESTABLISHING RESPONSE, QUARANTINE, AND PREVENTIVE CONTAINMENT MEASURES CONCERNING CORONAVIRUS DISEASE 2019 (COVID-19); AND,

RENEWAL OF ORDER DIRECTING THE CNMI HOMELAND SECURITY & EMERGENCY MANAGEMENT OFFICE, THROUGH THE CNMI COVID-19 TASK FORCE, AND IN PARTNERSHIP WITH THE COMMONWEALTH HEALTHCARE CORPORATION, TO UNDERTAKE NECESSARY COVID-19 CONTAINMENT MEASURES BY MEANS OF THE DEVELOPMENT OF EMERGENCY DIRECTIVES TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a novel virus that is the cause of severe acute respiratory illness. It was first detected in Wuhan, Hubei Province, People's Republic of China in December of 2019. As of October 3, 2022, more than 618 million cases of COVID-19 have been reported world-wide resulting in more than 6.54 million deaths.

WHEREAS, COVID-19 is a highly contagious disease that can lead to serious illness and death, especially for the elderly and people who have underlying medical conditions. The potential pandemic impact of COVID-19 on the vulnerable population of the Commonwealth cannot be understated. Vaccines and treatments are available but measures such as isolation and containment are still important tools in the fight against COVID-19 and need to be available for use by health officials. Action is necessary to protect the health and safety of our senior citizens, medically vulnerable, and all other CNMI residents and visitors.

WHEREAS, COVID-19, through its variants, continues to pose a significant and imminent threat of harm to the community, environment and people of the CNMI. As recently as June-July of this year, a wave of COVID-19 infections spread through the community. An emergency declaration is still needed to ensure the containment of COVID-19 in the CNMI.

WHEREAS, as the CNMI continues to open up its economy to tourism from Asia markets, the chance of COVID-19 once again spreading in the community is heightened.

WHEREAS, the United States Department of Health and Human Services continues its public health emergency indicating that federal public health officials still see COVID-19 as a threat to public health.

WHEREAS, the Office of the Governor has consulted with the CNMI Homeland Security & Emergency Management Office and other agencies and believes renewals of EO 2020-04, as amended, and EO 2020-07 are warranted.

WHEREAS, by renewing the Declaration of State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, and by renewing Executive Order 2020-07, I intend to direct the Commonwealth Healthcare Corporation, the CNMI Homeland Security & Emergency Management Office and all other necessary Commonwealth agencies to undertake containment measures as necessary to meet the threat of COVID-19.

NOW THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution, the Homeland Security and Emergency Management Act of 2013, 1 CMC § 20144, and the CNMI Emergency Health Powers Act of 2003, 3 CMC §§ 2181-2195, do hereby declare a State of Public Health Emergency and State of Significant Emergency for the entire Commonwealth of the Northern Mariana Islands due to the imminent threat posed by COVID-19 and order the following:

(A) Renewal of Executive Order 2020-04:

- (1) The Declaration of a State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, is hereby renewed and shall thus continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-04, as amended, shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-04, as amended, shall remain in effect for thirty (30) days from the date of this Executive Order.

(B) Renewal of Executive Order 2020-07:

- (1) Executive Order 2020-07, which ordered the CNMI Homeland Security & Emergency Management Office, through the CNMI COVID-19 Task Force in partnership with the Commonwealth Healthcare Corporation, to undertake necessary COVID-19 containment measures by means of the development of emergency directives to protect the health and safety of the public, is hereby renewed and shall continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-07 shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-07 shall remain in effect for thirty (30) from the date of this Executive Order.

This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the CNMI, its departments, agencies, its officers, employees, or agents, or any other person.

SIGNED AND PROMULGATED ON THIS 8th day of October, 2022



RALPH DLG. TORRES
GOVERNOR



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. 2022-16

SUBJECT: RENEWAL OF DECLARATION OF STATE OF PUBLIC HEALTH EMERGENCY AND CONTINUED DECLARATION OF STATE OF SIGNIFICANT EMERGENCY ESTABLISHING RESPONSE, QUARANTINE, AND PREVENTIVE CONTAINMENT MEASURES CONCERNING CORONAVIRUS DISEASE 2019 (COVID-19); AND,

RENEWAL OF ORDER DIRECTING THE CNMI HOMELAND SECURITY & EMERGENCY MANAGEMENT OFFICE, THROUGH THE CNMI COVID-19 TASK FORCE, AND IN PARTNERSHIP WITH THE COMMONWEALTH HEALTHCARE CORPORATION, TO UNDERTAKE NECESSARY COVID-19 CONTAINMENT MEASURES BY MEANS OF THE DEVELOPMENT OF EMERGENCY DIRECTIVES TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a novel virus that is the cause of severe acute respiratory illness. It was first detected in Wuhan, Hubei Province, People's Republic of China in December of 2019. As of November 2, 2022, more than 631 million cases of COVID-19 have been reported world-wide resulting in more than 6.59 million deaths.

WHEREAS, COVID-19 is a highly contagious disease that can lead to serious illness and death, especially for the elderly and people who have underlying medical conditions. The potential pandemic impact of COVID-19 on the vulnerable population of the Commonwealth cannot be understated. Vaccines and treatments are available but measures such as isolation and containment are still important tools in the fight against COVID-19 and need to be available for use by health officials. Action is necessary to protect the health and safety of our senior citizens, medically vulnerable, and all other CNMI residents and visitors.

WHEREAS, COVID-19, through its variants, continues to pose a significant and imminent threat of harm to the community, environment and people of the CNMI. As recently as June-July of this year, a wave of COVID-19 infections spread through the community. An emergency declaration is still needed to ensure the containment of COVID-19 in the CNMI.

WHEREAS, as the CNMI continues to open up its economy to tourism from Asia markets, the chance of COVID-19 once again spreading in the community is heightened.

WHEREAS, the United States Department of Health and Human Services renewed its COVID-19 public health emergency on October 13, 2022 for 90 days indicating that federal public health officials still see COVID-19 as a threat.

WHEREAS, the Office of the Governor has consulted with the CNMI Homeland Security & Emergency Management Office and other agencies and believes renewals of EO 2020-04, as amended, and EO 2020-07 are warranted.

WHEREAS, by renewing the Declaration of State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, and by renewing Executive Order 2020-07, I intend to direct the Commonwealth Healthcare Corporation, the CNMI Homeland Security & Emergency Management Office and all other necessary Commonwealth agencies to undertake containment measures as necessary to meet the threat of COVID-19.

NOW THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution, the Homeland Security and Emergency Management Act of 2013, 1 CMC § 20144, and the CNMI Emergency Health Powers Act of 2003, 3 CMC §§ 2181-2195, do hereby declare a State of Public Health Emergency and State of Significant Emergency for the entire Commonwealth of the Northern Mariana Islands due to the imminent threat posed by COVID-19 and order the following:

(A) Renewal of Executive Order 2020-04:

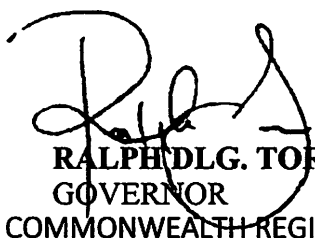
- (1) The Declaration of a State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, is hereby renewed and shall thus continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-04, as amended, shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-04, as amended, shall remain in effect for thirty (30) days from the date of this Executive Order.

(B) Renewal of Executive Order 2020-07:

- (1) Executive Order 2020-07, which ordered the CNMI Homeland Security & Emergency Management Office, through the CNMI COVID-19 Task Force in partnership with the Commonwealth Healthcare Corporation, to undertake necessary COVID-19 containment measures by means of the development of emergency directives to protect the health and safety of the public, is hereby renewed and shall continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-07 shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-07 shall remain in effect for thirty (30) from the date of this Executive Order.

This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the CNMI, its departments, agencies, its officers, employees, or agents, or any other person.

SIGNED AND PROMULGATED ON THIS 7th day of November, 2022


RALPH DLG. TORRES
GOVERNOR
COMMONWEALTH REGISTER

VOLUME 44 NUMBER 12 DECEMBER 28, 2022 PAGE 049369



COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS
OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NO. 2022-17

SUBJECT: RENEWAL OF DECLARATION OF STATE OF PUBLIC HEALTH EMERGENCY AND CONTINUED DECLARATION OF STATE OF SIGNIFICANT EMERGENCY ESTABLISHING RESPONSE, QUARANTINE, AND PREVENTIVE CONTAINMENT MEASURES CONCERNING CORONAVIRUS DISEASE 2019 (COVID-19); AND,

RENEWAL OF ORDER DIRECTING THE CNMI HOMELAND SECURITY & EMERGENCY MANAGEMENT OFFICE, THROUGH THE CNMI COVID-19 TASK FORCE, AND IN PARTNERSHIP WITH THE COMMONWEALTH HEALTHCARE CORPORATION, TO UNDERTAKE NECESSARY COVID-19 CONTAINMENT MEASURES BY MEANS OF THE DEVELOPMENT OF EMERGENCY DIRECTIVES TO PROTECT THE HEALTH AND SAFETY OF THE PUBLIC

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a novel virus that is the cause of severe acute respiratory illness. It was first detected in Wuhan, Hubei Province, People's Republic of China in December of 2019. As of December 4, 2022, more than 645 million cases of COVID-19 have been reported world-wide resulting in more than 6.64 million deaths.

WHEREAS, COVID-19 is a highly contagious disease that can lead to serious illness and death, especially for the elderly and people who have underlying medical conditions. The potential pandemic impact of COVID-19 on the vulnerable population of the Commonwealth cannot be understated. Vaccines and treatments are available but measures such as isolation and containment are still important tools in the fight against COVID-19 and need to be available for use by health officials. Action is necessary to protect the health and safety of our senior citizens, medically vulnerable, and all other CNMI residents and visitors.

WHEREAS, COVID-19, through its variants, continues to pose a significant and imminent threat of harm to the community, environment and people of the CNMI. As recently as June-July of this year, a wave of COVID-19 infections spread through the community. An emergency declaration is still needed to ensure the containment of COVID-19 in the CNMI.

WHEREAS, as the CNMI continues to open up its economy to tourism from Asia markets, the chance of COVID-19 once again spreading in the community is heightened.

WHEREAS, the United States Department of Health and Human Services renewed its COVID-19 public health emergency on October 13, 2022 for 90 days indicating that federal public health officials still see COVID-19 as a threat.

WHEREAS, the Office of the Governor has consulted with the CNMI Homeland Security & Emergency Management Office, the COVID-19 Task Force, and other agencies and believes renewals of EO 2020-04, as amended, and EO 2020-07 are warranted.

WHEREAS, by renewing the Declaration of State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, and by renewing Executive Order 2020-07, I intend to direct the Commonwealth Healthcare Corporation, the CNMI Homeland Security & Emergency Management Office and all other necessary Commonwealth agencies to undertake containment measures as necessary to meet the threat of COVID-19.

NOW THEREFORE, I, RALPH DLG. TORRES, pursuant to the authority vested in me as Governor of the Commonwealth of the Northern Mariana Islands by Article III, § 10 of the Commonwealth Constitution, the Homeland Security and Emergency Management Act of 2013, 1 CMC § 20144, and the CNMI Emergency Health Powers Act of 2003, 3 CMC §§ 2181-2195, do hereby declare a State of Public Health Emergency and State of Significant Emergency for the entire Commonwealth of the Northern Mariana Islands due to the imminent threat posed by COVID-19 and order the following:

(A) Renewal of Executive Order 2020-04:

- (1) The Declaration of a State of Public Health Emergency and Continued Declaration of a State of Significant Emergency embodied in Executive Order 2020-04, as amended, is hereby renewed and shall thus continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-04, as amended, shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-04, as amended, shall remain in effect for thirty (30) days from the date of this Executive Order.

(B) Renewal of Executive Order 2020-07:

- (1) Executive Order 2020-07, which ordered the CNMI Homeland Security & Emergency Management Office, through the CNMI COVID-19 Task Force in partnership with the Commonwealth Healthcare Corporation, to undertake necessary COVID-19 containment measures by means of the development of emergency directives to protect the health and safety of the public, is hereby renewed and shall continue for an additional thirty (30) days from the effective date.
- (2) This renewal of Executive Order 2020-07 shall take effect immediately and remain in effect for thirty (30) days from the date of this Executive Order. All memoranda, directives, waivers of regulations, and other measures taken in accordance with Executive Order 2020-07 shall remain in effect for thirty (30) from the date of this Executive Order.

This Executive Order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the CNMI, its departments, agencies, its officers, employees, or agents, or any other person.

SIGNED AND PROMULGATED ON THIS 7th day of December, 2022



RALPH DLG. TORRES
GOVERNOR