

**BRIEFING ON
OPERATION AND MAINTENANCE IMPROVEMENT PROGRAM GRANT
PROPOSED EXECUTIVE ORDER**

In November 1991, the Guam Bureau of Planning received a \$600,000 grant from the Department of Interior. In April 1992, the Governor signed the grant with several of the conditions revised. This grant was to assist in the management of the island's infrastructure by developing engineering base maps and an associated data base; to assist the utility agencies in maintaining and updating their engineering records with the computer technology that is available; and to address networking of computer systems among infrastructure and related agencies so that infrastructure data can be shared among agencies.

One of the components of the grant which was supported by the Office of Territorial and Interior Affairs (OTIA) was to create a user group consisting of agencies who use utility and land data. This committee serves as a vehicle for coordination and information exchange. The committee will act as a forum for which agencies can address questions dealing with computerization and communications, standardization of data, and training. This group will assist in the development of Guam's technical base. The Bureau of Planning, Department of Land Management, the Guam Environmental Protection Agency, and Department of Administration Data Processing Division are also members of the user group. The first project of the group is to network Guam Power Authority and the Public Utility Agency of Guam to the Department of Land Management's Geographical Information System/Land Information System. The other agencies will eventually be part of the network.

The user group has met several times to design the configuration for the Infrastructure Information System. The hardware and software has been ordered and will be in place at the agencies by December.

Attached is the Executive Order that will formalize the user group.

ADMINISTRATIVE RULES AND REGULATIONS
OF
THE GOVERNMENT OF GUAM

Title 12 - Department of Labor
Chapter 4 - Temporary Alien Workers

Subchapter I. - Authority and Purpose.

- A. Authority.
- B. Purpose.

Subchapter II. Definitions.

- A. "Department of Labor;" "Director of Labor"
- B. "U.S.-Resident Worker"
- C. "Employer"
- D. "Employment Position"
- E. "Job Opportunity"
- F. "Temporary Alien Worker"
- G. "Temporary Labor Certification"
- H. "Application"
- I. "Registration"

Subchapter III. Certification Required; Expiration; Extension.

- A. Certification: Required.
- B. Certification: Expiration.
- C. Certification: Extension.

Subchapter IV. Certification Requirements.

- A. Recruitment.
- B. Application.
- C. Bonds Required.
- D. Recruitment Verification.
- E. Recommendation to the Governor.

Subchapter V. Registration of Temporary Alien Workers; Identification Badges.

- A. Registration Required.
- B. Registration Process.
- C. Testing.
- D. Registration Granted.
- E. Identification Badges.

Subchapter VI. Renewal of Certification and Registration.

Subchapter VII. Exit Clearance.

- A. Application for Exit Clearance.
- B. Notification of Departure.

Subchapter VIII. Living Arrangements.

- A. Temporary Alien Workers Required to Live in Group Quarters.
- B. Deductions from Pay for Lodging and Board Limited to Actual Costs.

Subchapter IX. Control of Temporary Alien Workers' Behavior and Passports.

Subchapter X. Employer's Workplace Monthly Report.

- A. Employee Information.
- B. Certification and Registration Information.
- C. Employment Position Information.
- D. Costs of Benefits; Deductions from Pay.
- E. Information Regarding Transferred Temporary Alien Workers.
- F. Information Regarding the Unplanned Departure of a Temporary Alien Worker from Guam.

Subchapter XI. Notices.

Subchapter XII. Other Laws, Rules and Regulations Applicable.

Subchapter XIII. Penalties.

- A. Simple Violations.
- B. Multiple Violations.
- C. Willful Violations.
- D. Persistent Violations.

Subchapter XIV. Hearings.

Subchapter XV. Petitions.

Subchapter XVI. Severability.

Subchapter XVII. Interpretation.

Subchapter I. - Authority and Purpose.

- A. Authority. Authority under Guam law for the promulgation of Rules and Regulations affecting labor conditions in Guam by the Director of Labor is contained principally in §48055 of the Government Code (GC), and additional authority for these Regulations is provided by §44017.1(a) and §44025 GC.
- B. Purpose. The purpose of these Rules and Regulations is to provide for the orderly control of the process in certifying the lack of available U.S.-resident labor for

employment opportunities in Guam, in recruiting Temporary Alien Workers for employment in specific jobs available in Guam, in ensuring that Temporary Alien Workers are accorded fair and safe treatment in their employment and stay in Guam, and in protecting the U.S.-resident labor force from adverse effects due to the employment in Guam of Temporary Alien Workers.

Subchapter II. Definitions. For the purposes of this Chapter, and unless required by context, the following terms shall have the following definitions:

- A. "Department of Labor;" "Director of Labor" shall mean the Government of Guam Department of Labor and the Director thereof, respectively;
- B. "U.S.-Resident Worker" shall mean any person, whether a citizen or national of the United States of America or a foreign citizen or national, who is legally permitted to reside and work permanently within the United States of America and its Possessions;
- C. "Employer" shall mean any person, firm, corporation or other organization currently located in Guam which hires or which is legally entitled and prepared to hire the labor services of persons and to which U.S.-resident workers may be referred for employment, or the authorized representative of such person, firm, corporation or other organization. An employer must be duly registered and licensed to conduct business in Guam;
- D. "Employment Position" shall mean any established, paid position within an employer's business organization that is either filled or available to be filled by a person offering labor services to the employer;
- E. "Job Opportunity" shall mean any established employment position which is

currently vacant and left unfilled by a qualified worker;

- F. "Temporary Alien Worker" shall mean any person who is not a U.S.-resident worker and who comes temporarily to the United States to perform labor services, but remains a resident of a foreign country and has no intention of abandoning that foreign residency;
- G. "Temporary Labor Certification" shall mean a certification issued and attested to by the Governor of Guam that there is a need and use for Temporary Alien Workers in Guam, and that it has been determined that:
- 1) There are no U.S.-resident workers who are available and willing to fill a job opportunity in an employment position established in Guam; and,
 - 2) The employment of a Temporary Alien Worker in Guam in a particular employment position will not adversely affect wage rates, other compensation, or the working conditions of U.S.-resident workers similarly employed in Guam.

It shall have the same meaning as the term, "Alien Employment Certification;"

- H. "Application" shall mean either the process or the written documents required to be filed, in a form provided by the Department of Labor, in making a request for a Temporary Labor Certification, the Registration of a Temporary Alien Worker, or Exit Clearance for a Temporary Alien Worker; and,
- I. "Registration" shall mean the recording of personal and other officially-required information with the Department of Labor regarding an individual Temporary Alien Worker, and the approval of that individual's authorization to work, on a temporary basis, for a specified period of time and for a specific employer, on a designated project or designated projects in Guam.

Subchapter III. Certification Required; Expiration; Extension. A Temporary Labor Certification is required before a Temporary Alien Worker can be permitted entry to work in Guam. Such certification shall be valid only for the employer submitting the prerequisite Application for Certification, and only for the specific activity and the occupation for every Temporary Alien Worker covered by the certification, and shall not be transferable. This certification may only be valid for a period of up to one year, and upon expiration, the Temporary Alien Worker must leave Guam. Provided, however, that it shall be possible, under certain conditions, to extend a certification for additional periods of up to one year, for a total period of certification of an individual Temporary Alien Worker of up to three years.

A. Certification: Required. Each employer seeking to bring a Temporary Alien Worker into Guam for purposes of employment, or to employ such Temporary Worker while in Guam, shall first obtain a certification from the Governor of Guam, through the Department of Labor, that such Temporary Worker's employment in Guam will not:

1. Adversely affect wages prevailing in Guam in the industry and occupation for which certification for such Temporary Worker is requested;
2. Adversely affect working conditions in Guam; or,
3. Displace any U.S.-resident worker from employment or exclude any qualified U.S.-resident from any job opportunity within Guam.

In addition, such employer shall agree to abide by the laws and regulations of the United States and of Guam for the duration of such Temporary Alien Worker's presence in Guam.

B. Certification: Expiration. Each certification of the need to bring a Temporary Alien Worker into Guam shall expire no more than one calendar year beyond its

initial effective date.

- C. Certification: Extension. Each extension of a certification shall meet all of the requirements, provisions and conditions that are necessary in obtaining an initial certification for the employment of a Temporary Alien Worker in Guam. In addition, no certification shall be renewed for a period of time that would allow an individual Temporary Alien Worker to enjoy a continuous stay of more than three years in Guam, except that an absence from Guam and the United States for a continuous period of six months shall qualify the Temporary Worker for additional temporary employment in Guam as if the Temporary Worker had not previously worked in the United States.

Subchapter IV. Certification Requirements. It is intended in these Regulations that every responsible effort is made to ensure that the objectives of the laws of Guam and the United States regarding the employment of Temporary Alien Workers are met, both in the letter and the spirit of the law. To this end, Temporary Alien Workers may only be certified for full-time Job Opportunities where the Job Opportunity is neither vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, nor at issue in a labor dispute, and an extensive set of requirements must be met to ensure that the labor market for U.S.-resident workers is thoroughly tested before a recommendation can be made by the Department of Labor that a Temporary Labor Certification be issued by the Governor of Guam. These requirements fall into the categories of recruitment, application, verification and recommendation.

- A. Recruitment. An employer must make an exhaustive attempt to recruit U.S.-resident workers for any Job Opportunity that it might have among its Employment Positions, which may not require any qualifications or other conditions that

would preclude consideration of or otherwise prevent effective recruitment of U.S.-resident workers, before filing an Application for Certification of the need for Temporary Alien Workers in Guam. Substantially the same terms and conditions of employment must be offered to U.S.-resident workers before the job opportunity is offered to any Temporary Alien Worker, as follows:

1. **Prevailing Wage Rate.** The Job Opportunity must be offered at the prevailing wage rate, established by the Director of Labor through survey and publication, for those particular skills and level of experience required in the employment position and industry in which the opportunity is offered. Should such prevailing wage rate not be among those published, the Director shall advise the employer of the appropriate prevailing wage rate to offer in recruiting to fill a job opportunity under the requirements of these Regulations.
2. **Other Compensation.** In addition to other terms and conditions of employment, the employer may offer non-wage compensation to the prospective employee, including but not limited to transportation, board and lodging, health and life insurance, a retirement annuity and bonuses, but all such compensation must be offered to U.S.-resident workers to at least the same extent and in the same manner as they are offered or to be offered to Temporary Alien Workers.
3. **Advertising Job Opportunities.** The employer shall advertise a Job Opportunity for an Employment Position in a publication of general circulation in Guam, such advertisement including all terms and conditions of employment as may be offered for the Job Opportunity and Employ-

ment Position, for a period of three consecutive working days, and in such other media and for such period as may be required by the United States government, after submitting an Application for Certification. Such advertising shall direct applicants to the Guam Employment Service of the Department of Labor, and shall not identify the employer's name, address or telephone number.

4. Compliance. The employer shall be in compliance with all other laws and regulations of Guam and the United States during its efforts in the recruitment of Temporary Alien Workers under this Chapter.
5. Testing of U.S.-Resident Workers. No employer shall subject a U.S.-resident worker to testing, either orally or in writing, as an element in the recruitment process in the absence of proof that Temporary Alien Workers are also subject to substantially the same tests, and the tests are based upon established U.S. standards.

B. Application. In order for an Application for Certification to be entertained by the Governor of Guam, it must first be properly submitted to the Department of Labor; the Application for Certification must be submitted to the Department of Labor at least 40 days before the worker's services are needed. The Application shall, at a minimum, meet the following requirements:

1. Form and Submission. Each Application for Certification shall be submitted to the Department of Labor on Form GDOL 750 Part A, provided by the Department of Labor, or a reasonable facsimile; such submission shall be in triplicate, with each copy bearing the original signature of the applicant, and shall include all of the information

requested on the form and required in these Regulations by the Department of Labor; all information included in the Application shall be true and correct. Each Application for Certification may be for the certification for more than one Temporary Alien Worker within a single occupation, but no Application for Certification may include a request for Temporary Labor Certification of Temporary Alien Workers in more than one occupation. An employer applying for Certification for both new recruitment and for the extension of Certification for Temporary Workers already working in Guam within a single occupation must, however, submit an Application for new recruitment and a separate Application for extension for each occupational category.

2. Information Required. In submitting an Application for Certification, the employer shall provide the following information:
 - a. The name, permanent address and type of visa held by the Temporary Alien Worker, if the application is for the extension of certification of an alien already registered to work in Guam; if the application is for a new importation of labor, this information may be provided at a later time;
 - b. The name, address and telephone number of the employer, and the nature of the employer's business;
 - c. The job title, hours of work, work schedule and rate(s) of pay offered for the Employment Position, and a full description of the job to be performed, including whether it is permanent or temporary in nature and whether it is unionized. If the Employment

Position is temporary, the number of such positions to be filled by aliens and the exact expected beginning and ending dates of the Job Opportunity must be included;

- d. A detailed description of the employer's efforts to recruit U.S.-resident workers to fill the Employment Position, specifying all sources of recruitment by name, and the results of such efforts; and,
 - e. A description of the minimum qualifications necessary for the Employment Position, including education, training, experience and any other special requirements.
3. Assurances Required. In addition to the information required in an Application for Certification, the employer shall provide the following written assurances:
- a. That the recruited alien's agent or attorney has not been and will not be involved in the process of attempting to recruit qualified U.S.-resident workers for the Job Opportunity;
 - b. That the Employment Position is temporary, that the Job opportunity actually exists, that no qualified U.S.-resident worker will be displaced or otherwise adversely affected as a result of the approval of the Application for Certification, and that, other things being equal, the Temporary Alien Worker's employment will be terminated before that of any U.S.-resident worker in a similar position;
 - c. That reasonable efforts have been and will continue to be made by the employer to obtain qualified U.S.-resident workers at the

- i. The surname and given name, height and weight (in standard English units of measure), eye color, date of birth, address and telephone number while in Guam, home address and country, INS Form I-94 AGA number, passport number and arrival date of the Temporary Alien Worker; and,
 - ii. The employer's name, telephone number and address in Guam, and the name and telephone number of the Temporary Alien Worker's manager or supervisor.
- b. Assurances Required. In addition to the information required in the Application for Registration, the following written assurances shall be required:
 - i. That the employer will comply with all applicable laws and regulations of Guam and the United States for the duration of the Temporary Alien Worker's stay in Guam;
 - ii. That the employer will continue to attempt to recruit U.S.-resident workers for its Employment Positions filled by a Temporary Alien Worker for the duration of the Temporary Worker's stay in Guam;
 - iii. That the employer participates and will continue to participate in the Apprenticeship Program, as prescribed by the Guam Community College, or such other Apprenticeship Program(s) as may be approved by the Director of Labor;
 - iv. That the employer will obtain an Exit Clearance from the

Department of Labor prior to the departure of the Temporary Alien Worker from Guam; and,

- v. That no employment contract other than the employment contract submitted with the Application for Registration is in force, either in the U.S. or in any foreign country, that covers the Job Opportunity for which the Temporary Alien Worker is being employed in Guam, and that two copies of the employment contract have been provided to the Temporary Worker, one in English and the other in the language of literacy of the Temporary Worker.

- c. Documents Required. In addition to the information and assurances required above, a complete Application for Registration must have the following documents attached:
 - i. Two copies of the employment contract between the employer and the Temporary Alien Worker, one in English and the other in the language of literacy of the Temporary Worker;
 - ii. If applicable, a signed authorization from the Temporary Alien Worker to the employer to deduct a specified amount from the Temporary Worker's pay each pay period in compensation for board and lodging actually provided by the employer to the Temporary Worker; and,
 - iii. If applicable, a signed authorization from the Temporary Alien Worker to the employer for the employer to hold the

Temporary Worker's passport for safekeeping and for other specified purposes, and including a statement of understanding, initialed by the employer, that the passport shall be returned to the Temporary Worker upon request.

d. In order for an Application for Registration to be considered by the Department of Labor, such Application must also comply with all other requirements established by the Governor of Guam through Executive Order.

3. **Registration Fee.** A non-refundable fee of Two Hundred Dollars (\$200.00) shall be paid to the Department of Labor upon the registration of any Temporary Alien Worker to be employed by an employer within Guam. If such registration is for a period of less than one year, the amount of this fee shall be prorated to the amount necessary to cover that portion of a year for which the registration is made.

C. Testing. Upon submission of an Application for Registration, the Department of Labor may test or cause to be tested the skills and qualification of a Temporary Alien Worker for the Job Opportunity and Employment Position for which the Temporary Worker is certified. If the Temporary Alien Worker is found not to have the requisite skills or qualifications for the Employment Position, such Temporary Worker shall not be registered, but shall be referred to the U.S. Immigration and Naturalization Service for disposition. In addition, if a Temporary Alien Worker is found not to have the requisite skills or qualifications, the Department of Labor may cause all such Temporary Workers certified to work for the employer to be similarly tested.

D. Registration Granted. Upon successful compliance with the requirements of A., B. and C., above, the Department of Labor will approve the Application for Registration and will authorize the Temporary Alien Worker to work in Guam for a period of up to one year. Evidence of such registration shall consist of a current and valid identification badge issued by the Department of Labor to the Temporary Worker, and such identification badge shall constitute a work permit and a work permit identification card.

E. Identification Badges. The Director of Labor shall issue an identification badge to each Temporary Alien Worker registered with the Department and authorized to work in Guam. Such identification badge shall have upon it the name of the Temporary Alien Worker, the name of his/her employer, the job category for which the Temporary Worker is certified, a photograph of the Temporary Worker's face, and such other information as may be deemed appropriate by the Director of Labor; it shall bear the signature of the Director of Labor.

1. Issuance. Each Temporary Alien Worker shall be issued an identification badge by the Department of Labor upon completion and approval of registration with the Department.

2. Conditions. Each Temporary Alien Worker registered with the Department of Labor and issued an identification badge shall meet the following conditions:

a. The Temporary Alien Worker's identification badge shall be retained upon the person of such Temporary Worker (except for necessary and incidental occasions related to personal health and hygiene needs) at all times; and,

- b. Such Temporary Worker shall conspicuously display his/her identification badge at all times during working hours, preferably worn at the collar or breast pocket, but also acceptable at the frontal waistband, sleeve or shirt opening, or attached to the front of the Temporary Worker's safety helmet.
3. Replacement. In the event that a Temporary Alien Worker's identification badge is lost, misplaced, stolen or accidentally destroyed, such incident shall be reported immediately to the Department of Labor, and the Temporary Worker shall immediately seek replacement of the identification badge. In seeking replacement, the Temporary Worker must:
 - a. File an affidavit with the Department of Labor describing the circumstances of the loss, misplacement, theft or destruction of the identification badge, and attest that such affidavit is true; and,
 - b. Pay Ten Dollars (\$10.00) to cover the costs of replacing the identification badge.

Subchapter VI. Renewal of Certification and Registration. In order for an employer to retain the labor services of a Temporary Alien Worker in an Employment Position beyond the period for which the Temporary Worker is registered, the employer must meet all of the requirements of certification and registration of the Job Opportunity and the Temporary Worker as if they were for the initial employment of the Temporary Worker in Guam.

Subchapter VII. Exit Clearance. At least 15 days prior to the departure of a Temporary Alien Worker from Guam, the Temporary Worker's employer shall apply with the Department of Labor for exit clearance for the Temporary Worker, and such application shall be approved by the

Director of Labor. Before issuing an Exit Clearance, the Director of Labor shall require an affidavit from the employer that all wages and other compensation due and payable to the Temporary Worker(s) have been paid or otherwise given to the Temporary Worker(s) by the employer.

- A. Application for Exit Clearance. A completed Application for Exit Clearance shall be filed by every employer of a Temporary Alien Worker preparing to depart from Guam, and such Application shall be filed on a form provided by the Department of Labor.
- B. Notification of Departure. Within ten days after the departure of a Temporary Alien Worker from Guam, the employer of that Temporary Worker shall provide the Department of Labor with notice of such departure, and in such notice shall include the name, occupation, citizenship, date of departure, transportation carrier and flight number, point of recruitment and point of return, as well as the ticket number of the departing Temporary Alien Worker.

Subchapter VIII. Living Arrangements. Any employer having certification for more than five Temporary Alien Workers in Guam shall make lodging and board available to its employees in Guam. Such lodging may be in a workers' dormitory, and each of the employer's employees residing in such workers' dormitory may have a charge for such lodging and board deducted from his/her pay; such board may include, but not be limited to, the Temporary Worker's meals and personal hygienic needs, and charges for such board provided by the employer may be included in the charge for lodging deducted from the Temporary Worker's pay. Deductions from the Temporary Worker's pay for lodging and board may be made only after authorization by the Temporary Worker for such deductions is filed by the Temporary Worker, in writing, with the

Department of Labor. Such lodging and board shall be in compliance with the laws and regulations of Guam and the United States relating to sanitation, health and safety, and the employer's facilities and staff used in providing such lodging and board to Temporary Workers shall be subject to permitting requirements and unimpeded inspection by the Departments of Labor and Public Health and Social Services and the Guam Environmental Protection Agency.

- A. Temporary Alien Workers Required to Live in Group Quarters. Any Temporary Alien Worker employed by an employer required to make lodging and board available to its employees must reside in a workers' dormitory provided by the employer, except that any Temporary Worker planning to live with a relative in Guam or having personally made other living arrangements in Guam may petition the Department of Labor for an exemption from this requirement and, upon providing satisfactory evidence to the Department of Labor that such living arrangement is appropriate and continuously available, may be granted such exemption by the Director of Labor.

- B. Deductions from Pay for Lodging and Board Limited to Actual Costs. The employer shall be entitled to recover its costs in providing lodging and board to an employee by deducting such amounts from the employee's pay, but such deductions shall not exceed the actual cost incurred by the employer in providing lodging and board to the employee. If such deductions from the pay of a Temporary Alien Worker exceed Eighty Dollars (\$80.00) per week, the employer shall submit records and such other proof as is necessary to satisfy the Department of Labor that such costs were actually incurred; all such costs may be fully allocated by the employer in determining the amount to deduct from an employee's pay.

Subchapter IX. Control of Temporary Alien Workers' Behavior and Passports. The activities of a Temporary Alien Worker in Guam are the responsibility of the employer having certification for that Temporary Worker, except that no employer of any Temporary Alien Worker in Guam shall control that Temporary Worker's behavior during non-working hours. In addition, no employer shall withhold the passport of any Temporary Alien Worker in Guam, except that the employer may hold the Temporary Worker's passport for safekeeping and for other purposes when authorized by the Temporary Worker, in writing, to do so, and when a copy of such authorization has been filed with the Department of Labor, but such passport, if so held, shall be returned to the Temporary Worker immediately upon request.

Subchapter X. Employer's Workplace Monthly Report. Every employer having certification for Temporary Alien Workers in Guam shall file a complete monthly report with the Department of Labor on a form provided by the Department. Such report shall be filed no later than the seventh day of each calendar month, and shall be a true and accurate account of the employer's workforce activities for the calendar month immediately preceding. Such report shall include, but not be limited to:

- A. Employee Information. This shall include the full name, address, citizenship, visa category, Social Security number or AGA number, place of residence in Guam and occupation of each Temporary Alien Worker performing labor services for the employer;
- B. Certification and Registration Information. This shall include the commencement and termination dates of certification and registration for every Temporary Alien Worker providing labor services for the employer;
- C. Employment Position Information. This shall include the nature and type of work

and the project or projects for which each Temporary Alien Worker is performing labor services;

- D. Costs of Benefits; Deductions from Pay. This shall report the actual, fully-allocated costs to the employer of providing lodging, board, transportation and any other non-wage compensation given to each Temporary Alien Worker providing labor services to the employer, and a true accounting of the deductions from each Temporary Alien Worker's pay taken in exchange for such non-wage compensation;
- E. Information Regarding Transferred Temporary Alien Workers. This shall report the name and occupation of every Temporary Alien Worker who has been or is being recruited, certified and registered by another employer, who is now or has within the past three months been an employee of the employer; and,
- F. Information Regarding the Unplanned Departure of a Temporary Alien Worker from Guam. In the event that a Temporary Alien Worker registered by the employer permanently leaves Guam, whether in an emergency or for any other reason, and the employer has not had a reasonable opportunity to obtain an Exit Clearance for the Temporary Worker, this shall be reported in the Employer's Workplace Monthly Report.

Subchapter XI. Notices. Any notices or Applications to be filed with the Department of Labor in relation to Temporary Alien Workers shall be filed with the Department's Alien Labor Processing and Certification Division. Any notices to be served upon an employer of Temporary Alien Workers in Guam by the Department of Labor shall be served upon the employer at its address on file in Department records, or, if the employer has retained the services of an attorney

to act as its agent in the Applications for Certification and Registration required under these Regulations, upon that attorney in his/her office in Guam.

Subchapter XII. Other Laws, Rules and Regulations Applicable. All other laws, rules and regulations of Guam and of the United States, applicable in Guam, relating to the employment of persons and the conduct of business, shall be applicable to the employment of Temporary Alien Workers in Guam, and are incorporated by this reference into these Regulations.

Subchapter XIII. Penalties. Any violation of these Regulations may be subject to administrative penalties under this Chapter, in addition to any other penalty that may be established by law. Penalties imposed under this Chapter shall be limited to administrative penalties, but there may be other penalties provided under law that apply to additional provisions beyond the scope of these Regulations. Penalties for a violation of these Regulations related to the certification or employment of a Temporary Alien Worker in Guam shall be limited to a fine not exceeding Five Hundred Dollars (\$500.00) for a Simple Violation and for each instance of a violation within a Multiple Violation. Penalties imposed for a Willful Violation or a Persistent Violation shall be no less than One Thousand Dollars (\$1,000.00), nor more than Twenty-Five Thousand Dollars (\$25,000.00); in addition to the fine imposed for a Willful Violation or a Persistent Violation, the case of the offender may be referred to the Attorney General of Guam for criminal prosecution.

In the event of a violation of the provisions of this Chapter, the offender will be served with a notice of violation, and shall have the right to an administrative hearing conducted by the Director of Labor. The offender shall be given a period of fifteen calendar days to meet with the appropriate Division Head(s) within the Department of Labor, at which time the offender will be apprised of the level of the fine imposed for the offense; the offender may either pay the fine

at that time, or appeal to the Director of Labor for a hearing to present the case in the offender's defense; the offender shall have a right to counsel during such hearing.

There are four classes of offense under this Chapter. They are:

- A. Simple Violations. These are single, isolated violations of these Regulations that apply only to one Temporary Alien Worker and his/her employer, and are not repetitive in nature.
- B. Multiple Violations. These are violations by an employer that apply to more than one Temporary Alien Worker, but are not repetitive in nature.
- C. Willful Violations. These are violations that are either repetitive in nature, being repeated after an employer has already been cited for the same or a similar violation of the laws or regulations applicable to the employment of Temporary Alien Workers in Guam, or committed in reckless disregard of such laws or regulations.
- D. Persistent Violations. These are similar to Level C violations, except that they are willful violations that are repeated within the span of a single year.

In addition to any other penalty under these Regulations or any other law or regulation applicable in Guam, the Director of Labor may refer the violator to the Executive Director of the Guam Contractors Licensing Board, the Assistant U.S. Attorney in Guam and/or the Officer in Charge of the Immigration and Naturalization Service in Guam for prosecution or other disposition of such violator. In addition, and in cases where material misrepresentation, fraud, or a conviction of a criminal offense has occurred, the Director of Labor may disbar an employer from eligibility to participate in the Temporary Labor Certification program for a period of up to three years.

Subchapter XIV. Hearings. Upon the request and appeal of an employer of any Temporary

Alien Worker or such Temporary Worker himself or herself, the Director of Labor shall hold a hearing of the facts, and shall give the employer or Temporary Worker cited for a violation of these Regulations the opportunity to be heard and to provide rebuttal to any evidence that might be presented. Such hearing shall take place at a time and in a place designated by the Director of Labor, but shall in no case be held less than thirty days after a notice of violation is issued; such notice of violation shall provide specific information about the alleged violation, including a statement of the evidence that such violation has occurred, the penalty proposed, and a statement of the employer's or Temporary Worker's right to present evidence in its or his/her defense.

Subchapter XV. Petitions. Any individual shall have the right to submit to the Director of Labor a petition for the establishment or modification of rules and regulations on subjects under the Authority of the Director, and shall have the right to request advisory rulings, consultations or declaratory rulings in relation to existing regulations. Such petitions and requests shall be submitted in writing and on a form provided by the Department of Labor, and shall be acted upon within 60 days by the Director. The Director shall respond to all petitions submitted under this Title in writing.

Subchapter XVI. Severability. If any part of these Regulations is for any reason declared to be invalid by a court of law, the remaining regulations under this Title shall not be affected thereby, and shall remain valid and enforceable.

Subchapter XVII. Interpretation. The provisions of these Regulations shall be liberally interpreted to ensure the compliance of Temporary Alien Workers and their employers in Guam with the objectives and purposes of the laws and regulations of Guam and the United States.

Prevailing Wage Rate, benefit levels, terms and conditions of employment, and working conditions no less favorable than those offered to the Temporary Alien Worker, and that the Job Opportunity is open to all qualified U.S.-resident workers without regard to race, color, creed, national origin, age, sex or citizenship, and to U.S.-resident workers with handicaps who are qualified, willing, able and available to perform the job offered;

- d. That the employer has not rejected and will not reject any qualified U.S.-resident worker on the grounds that the employer's supervisory personnel speak a language other than English;
 - e. That the Job Opportunity is neither vacant because the former occupant is on strike or is being locked out in the course of a labor dispute, nor at issue in a labor dispute; and,
 - f. That the employer will comply with all applicable Guam and U.S. laws and regulations during the period for which the certification is requested.
4. Additional Documentation to be Attached. In addition to the information and assurances required above, the employer shall attach the following documents to the Application for Certification:
- a. Written documentation of all efforts to recruit U.S.-resident workers for the Employment Position (including clippings of newspaper advertisements and other public notices of the Job Opportunity) and details of the results of such efforts, including the name(s) and Social Security number(s) of any U.S.-resident

- worker(s) hired or rejected;
- b. One copy of the employer's current license to do business in Guam and (if applicable) the employer's Articles of Incorporation or Partnership Agreement;
 - c. One copy each of the Job Orders (forms ESSI 514 and GES 514), exhibiting compliance with Subchapter IV.A., Paragraphs 1., 2. and 3. of this Chapter, for the occupational category covered by the application;
 - d. One copy of the employer's Workers' Dormitory Permit (if applicable); if such Permit is not available at the time of Application, it must be submitted prior to a Certification being granted;
 - e. A notarized Letter of Assurance in a form approved by the Department of Labor;
 - f. A sample copy of the employment contract to be used in recruiting employees for the Employment Position;
 - g. Two copies each of the project contract(s) (if applicable) and the building permit(s) (if applicable), provided:
 - i. if the employer is a contractor and is the project developer, a statement of the expected project completion date and documented information regarding the means of financing the project (such as a loan approval) shall be included; and,
 - ii. if the project is a subcontract, a copy of the prime contract should be included;
 - h. One copy each of:

- i. a clear project location sketch; and,
 - ii. a clear barracks location sketch;
- i. A completed Project Summary Sheet on a form provided by the Department of Labor;
- j. A Performance and Payment Bond and a Repatriation Bond covering all Temporary Alien Workers and U.S.-resident workers employed in the project;
- k. A notarized Statement of Guarantee that the employer will pay no less than the Prevailing Wage Rate (as established at the time the Application is submitted) to all U.S. and foreign workers employed by the employer, in a form approved by the Department of Labor; and,
- l. If the employer is represented in the application process by an agent or a non-management employee, a letter of authorization including a statement of the extent to which the agent is authorized to make changes to the application. If the agent is an attorney, a copy of INS Form G-28 (Notice of Appearance) must also be attached.

In addition, prior to the issuance of an approved Application for Certification, the employer shall submit a completed Clearance Sheet on a form provided by the Department of Labor indicating the approval of the applicant by the Guam Department of Land Management, the Guam Environmental Protection Agency, the Division of Environmental Health of the Guam Department of Public Health and Social Services, and the

Workers Compensation Commission, the Wage and Hour Division, the Guam OSHA Labor Compliance Inspection Section, the Bureau of Labor Statistics and the Fair Employment Practices Division of the Guam Department of Labor.

5. Other Requirements. The Application shall include such other assurances and meet such other criteria as may be required from time to time by the Governor of Guam through the issuance of an applicable Executive Order, and as may be required by the laws or regulations of Guam or the United States.

C. Bonds Required. Upon filing Application for Certification with the Department of Labor, the employer shall provide the Department with both a repatriation bond and a performance and payment bond, or evidence thereof, with the Department of Labor named as a beneficiary. The repatriation bond is to ensure that the costs of transporting a Temporary Alien Worker or a U.S.-resident worker to his/her point of origin can be met in the event of default or insolvency of the employer; the performance and payment bond is to ensure that the Temporary Worker or U.S.-resident worker is paid in full for all work performed for the employer.

1. Repatriation Bond. A repatriation bond, also referred to as a repatriation guaranty bond, shall be given to the Department of Labor by an employer for every Temporary Alien Worker registered with the Department of Labor by the employer. Such bond shall be in an amount sufficient to guarantee that the Temporary Alien Worker may be expeditiously returned to his/her point of origin upon the termination of the Temporary Worker's employment or eligibility for employment in Guam.

2. Performance and Payment Bond. A performance and payment bond in the amount of four percent of the total cost of the project or projects for which certification is requested shall be given to the Department of Labor for every project for which an employer seeks to employ a Temporary Alien Worker in Guam. This bond shall be given to the Department of Labor upon the Application for Certification of the first Temporary Alien Worker requested for the employer on a given project, and evidence of the bond shall be included with the Application for Certification of each subsequent Temporary Worker requested by the employer for the same project. A request for approval of authorization for the Temporary Worker to work on an additional project shall be accompanied by an additional performance and payment bond in the amount of four percent of the additional project amount.
3. Bonding Devices Acceptable. The sole financial device acceptable as a repatriation bond and performance and payment bond is limited to an Insurance Bond, issued by a carrier licensed to do business in Guam and naming the Department of Labor as a beneficiary. However, any Insurance Bond obtained as a performance and payment bond for any project may be used to satisfy other bonding obligations, except that the Guam Department of Labor shall be included as a beneficiary of such bond. The repatriation bond and the performance and payment bond may be combined in a single instrument, at the discretion of the employer.
4. Release of Bonds. The repatriation bond required shall be released after the employer provides the Department of Labor with a certification from

a transportation carrier that the Temporary Alien Worker has departed from Guam; such certification shall include the name of the Temporary Worker, the name of the carrier, the date of departure and the ticket number. The performance and payment bond required may be released when the employer provides evidence of the completion of a project, as shown by a notice of completion and/or an occupancy permit filed with the Guam Department of Labor, and evidence that all Temporary Alien Workers certified for the project either have been repatriated or are certified to work on another project in Guam which has not been completed. To obtain the release of bonds, the employer shall submit a request to the Director of Labor in writing, and shall attach such documentary information as is deemed appropriate to expedite the release.

D. Recruitment Verification. As the agency principally responsible for regulating employment conditions in Guam, the Department of Labor will verify, to the best of its ability, that the objectives of a Temporary Labor Certification (as indicated in Subchapter II.G.) are met in the recruitment process. The Department of Labor may therefore both verify that information in the Application relating to prior recruitment efforts is accurate and ascertain through its own efforts that the objectives of certification are met.

1. Any information or other evidence submitted by an employer in an Application for Certification may be verified to be true and correct through whatever means may be deemed necessary by the Department of Labor. The employer shall provide all reasonable assistance in this effort.
2. The Department of Labor may undertake to recruit a U.S.-resident worker,

through whatever means it deems appropriate, for any Job Opportunity offered by an employer submitting an Application for Certification. In the event that this process involves external costs, such as the costs of advertising, such costs shall be paid by the employer.

3. In the event that the Department of Labor is not able to verify that adequate recruitment efforts were made by the employer submitting an Application for Certification, or if the Application is found to not meet the requirements of these Regulations, such Application may not be submitted to the Governor with a recommendation for approval, but shall be returned to the employer with a written notice giving a reason why the Application was rejected. A notice of the right to appeal such rejection shall be included in such notification.

E. Recommendation to the Governor. Upon review and approval of an Application for Certification by the Department of Labor, such Application shall be transmitted to the Governor with a recommendation for certification. The Governor shall have final authority in Guam in the certification, and the decision of the Governor shall not be subject to appeal within the Government of Guam.

1. Transmittal to Governor. Such Application shall be transmitted to the Governor, with appropriate recommendations, within ten days of a determination of recommendation by the Director of Labor, and in no case later than sixty days past the date of submission of the Application.
2. Notification of Governor's Decision. Upon determination whether to certify or to not certify the Application for Certification, the Governor will return the Application to the Department of Labor for notification of the

employer.

- a. Upon return by the Governor of a determination to certify an Application for Certification to the Department of Labor, the Department will notify the employer submitting such Application within fifteen working days of the Governor's determination. Such notification shall include the Application for Certification, with a temporary labor certification stamp thereon, all supporting documents submitted as a part of the Application, and the Application shall indicate that the employer should submit all documents together with the employer's Application to the appropriate Immigration and Naturalization Service office.
- b. In the event that the Governor's determination is to not certify an Application for Certification, the Department of Labor shall provide a reason, in writing, as to why the Application was denied, and advise the employer of the right to appeal the determination to the Immigration and Naturalization Service.

Subchapter V. Registration of Temporary Alien Workers; Identification Badges. Once certification is obtained by the employer, it shall be the employer's responsibility that each Temporary Alien Worker be registered with the Department of Labor upon arrival in Guam. This process shall require the approval of an Application for Registration and the payment of a registration fee, as well as the posting of bonds required to ensure the payment of wages and other compensation to the Temporary Alien Worker and the repatriation of such Temporary Worker, upon termination of employment, to the Temporary Worker's country of residence.

Each Temporary Alien Worker authorized to work in Guam under the laws of the United States and Guam and under these Regulations shall be issued an identification badge as evidence of such authorization.

- A. Registration Required. Each employer bringing a Temporary Alien Worker into Guam for a Job Opportunity in an established Employment Position shall register such Temporary Worker with the Department of Labor upon the Temporary Worker's arrival in Guam, and prior to the initial employment of such Temporary Worker in Guam.
- B. Registration Process. All of the requirements of the registration process shall be met before an identification badge is issued to a Temporary Alien Worker, entitling said Temporary Worker to the right to employment, under restricted conditions, in Guam.
 1. Time of Registration. Each employer of a Temporary Alien Worker in Guam shall ensure that such Temporary Worker is registered with the Department of labor within 24 hours (excluding weekends and government of Guam holidays) of such Temporary Worker's physical arrival in Guam, such registration evidenced by the issuance by the Department of Labor of an identification badge to the Temporary Worker.
 2. Application for Registration. In order to register a Temporary Alien Worker, an Application for Registration shall be submitted by the employer to the Department of Labor on a form provided by the Department of Labor, and shall be approved by the Director of Labor.
 - a. Information Required. The following information shall be required upon the form submitted in an Application for Registration: