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**CHAPTER 7
TEMPORARY ALIEN WORKERS**

SOURCE: In 2009, this Chapter was amended by the Department of Labor pursuant to the Administrative Adjudication Law. Amendments were filed with the Guam Legislature on April 21, 2009 and became effective ninety days thereafter due to legislative inaction.

- § 7101. Authority and Purpose.
- § 7102. Definitions.
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§ 7101. 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 22 GCA § 1106, and additional authority for these Rules and Regulations is provided by 22 GCA §§ 7118.1 and 7126.

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(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.

§ 7102. Definitions.

For the purposes of this Chapter and to clarify verbiage in 22 GCA Chapter 7, 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;

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(f) *Temporary Alien Worker or Non-Immigrant Temporary 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 under the H-2B visa category, 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, on Form GDOL 750 and any attachments or supporting documents, 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.

(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.

(j) *Similarly Employed* means employed in an occupation which requires the same or similar level of education, training and experience as the occupation for which certification is requested. All workers in identical occupational categories shall be considered similarly employed in spite of education, training and experience levels for a

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specific job opportunity.

(k) For the purposes of these regulations *Performance & Payment Bond* shall have the same meaning as Wage Bond and is defined as a form of surety which guarantees payment of wages for workers associated with a project.

(l) *ALPCD* shall mean the Alien Labor Processing & Certification Division of the Guam Department of Labor

(m) *Direct Employee* shall mean employment in which an employer has hiring and firing authority; has direct day to day supervision of the worker; pays the worker's wages; and withholds and transmits local taxes on behalf of the worker.

§ 7103. 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 shall 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. The Director of Labor, in consultation with the Governor of Guam may temporarily institute policies to deal with emergent situations which include, but are not limited to, natural disasters, sudden changes in immigration regulations and numerical limitations of visas. These temporary policies may not conflict with the basic process of determining availability of U.S. workers and determining prevailing wages as required by federal regulations.

(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:

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(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 temporary labor certification shall expire no more than one calendar year beyond its initial effective date. The Department of Labor shall be responsible for setting validity dates on approved GDOL 750 forms, taking into consideration factors which include but are not limited to H-2B cap openings, duration of the applicant's projects, whether the application is for new importation or extension of stay and requests for amendments in the validity period.

(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.

(1) Temporary Labor Certifications issued for importation purposes may not be used for the extension of existing workers and likewise, temporary labor certifications granted for extension purposes may not be used for importing new workers.

§ 7104. Certification Requirements.

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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.

(A) In order to obtain a Prevailing Wage Determination, the employer must submit a written request to ALPCD on a form approved by the Department of Labor.

(B) The employer must pay the Prevailing Wage Rate listed

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on the Temporary Labor Certification certified by the Governor of Guam and such rate shall remain in effect until the expiration of the employer's temporary labor certification for all Temporary workers imported under such certification, and all similarly employed U.S. workers.

(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 Employment 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

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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 Alien Labor Processing & Certification Division at least 40 days but not more than 180 calendar 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, 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 and any attachments thereto shall be true and correct. Each GDOL 750 may be for the certification for more than one Temporary Alien Worker within a single occupation, but no GDOL 750 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 GDOL 750 for new recruitment and a separate GDOL 750 for extension for each occupational category.

(2) Information Required. In submitting a GDOL 750 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

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description of the job to be performed, and whether it is unionized, the number of such positions to be filled by aliens and the exact expected beginning and ending dates of the Job Opportunity;

(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 and abide by 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 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;

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(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.

(i) An employer's failure to comply with any of these assurances may be construed as a violation of the regulations and may result in civil penalties, revocation of the employer's labor certification and/or referral for prosecution or other administrative action.

(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 and such attachments shall be considered part of the 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 date of birth 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 completed copy of the Job Order form (GES 514), 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 no later than 15 calendar days

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prior to the arrival of the Temporary Alien Workers;

(E) A notarized Assurance in a form approved by the Department of Labor which includes a statement 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;

(F) A sample copy of the employment contract to be used in recruiting employees for the Employment Position;

(G) One Copy 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 detailing the type of project, the scope of work, the project amount, the expected project completion date and documented information regarding the means of financing the project (such as a loan approval) may 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 for each project; and,

(ii) a clear barracks location sketch;

(I) A completed Project Summary Sheet on a form provided by the Department of Labor;

(J) A Wage Bond or Payment Bond and a Repatriation Bond covering all Temporary Alien Workers and U.S-resident workers employed in the project;

(K) 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

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Appearance) must also be attached.

(L) The employer shall submit a completed Clearance Sheet on a form provided by the Department of Labor indicating the comments on the applicant by the Guam Department of Land Management, the Guam Environmental Protection Agency, the Department of Public Health and Social Services, Guam Department of Labor, the Wage & Hour Division of the U.S. Department of Labor and the Department of Revenue & Taxation. The specific divisions of each department required for clearance will be designated by the Department of Labor on the Clearance Sheet.

(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.

(6) Waiver of Documentation and Requiring Supplemental Documentation. The Director of Labor shall have the discretion to waive the submission of any documents required by (b)(4) and (b)(5) of this section, provided that the employer has adequately justified, in writing, the need for such waiver. Additionally, if deemed necessary, the Director of Labor shall have the discretion to require supplemental documentation not listed in this section in order to meet the spirit of the regulations or to assist in any fact finding being conducted in connection with the labor certification application.

(7) Determining Allowable Number of Workers. In considering an application for Temporary Labor Certification, the Department of Labor may use the following methods to determine the number of workers allowed for a particular labor certification:

(A) For Construction industry applications: $\text{Net Project Amount (as indicated on the Project Summary Sheet) divided by } \$55,000 = \text{Number of workers allowed.}$

(B) For non-construction employers or jobs which have no formal project contract, the department will consider the financial

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standing of the employer and written justification as to the employer's need for the worker. Factors to include project growth and business necessity can be weighed and considered when determining the number of workers to be allowed and whether to recommend approval or denial.

(C) In the event that the number of workers requested on a labor certification exceeds the number of workers allowed by applying the methods in sections (7)(A) and (7)(B), the employer may submit written justification, based on business necessity, to support their request. The Department of Labor may consider such justification when deciding whether the number of workers being requested is appropriate.

(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 wage bond or 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 wage bond or 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 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.

(A) To facilitate this requirement, ALPCD will survey local airlines to determine an average rate which may be used as a Standard Bond Rate. Such rate must be approved by the Director of Labor and will be valid for a period of no more than two (2) calendar years. The Director, at his or her discretion, may increase the established standard rate up to 25 percent to adjust

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for unforeseen increases in airfares. For applications where the point of origin is not listed on the Standard Bond rate listing, the employer must post a bond no less than the one way, high season rate for the airline or combination of airlines in which the employer intends to use to bring the worker to Guam. It shall be the responsibility of the employer to provide a price quotation from the airline or a travel agent to verify the rate. ALPCD may require additional quotations or verify the rates independently at their discretion.

(2) Wage Bond or Payment Bond. A wage bond in the amount of four percent of the total gross contract amount of the project or projects for which certification is requested or a payment bond 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 wage bond, endorsement/amendment of an existing wage bond or a payment bond.

(A) For applications in which there is no project contract or the employer is not in the construction industry, the wage bond amount must be at least 4% of 3 times the annual wages, based on the established prevailing wage rate, for all workers being requested on the application.

(3) Bonding Devices Acceptable. The financial devices acceptable as a repatriation bond and wage bond or payment bonds are limited to:

(A) A Bond issued by a carrier licensed, by the Insurance Commissioner, to do business in Guam and naming the Department of Labor as the beneficiary. In cases where a Payment Bond has been issued, the payment bond shall be acceptable, without specifically naming the Department of Labor

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as a beneficiary, provided that the verbiage in the bond does not prevent the Department of Labor from claiming against the bond on behalf of all workers on the project. The wage bond submitted must be valid until the end of the project; or until all workers are repatriated to their point of hire; or until released by the Department of Labor. Repatriation bonds must be valid for a period of at least 2 calendar years from the date of issuance.

(B) A Time Certificate of Deposit (TCD) from a banking institution licensed to do business on Guam. The TCD document must indicate the employer's name "in favor of Guam Department of Labor". The Department of Labor may withdraw funds from accounts established in this way without the consent of the employer, in order to satisfy unpaid wages or to effectuate the repatriation of workers. Banking institutions are prohibited from releasing funds in TCD accounts set up as bonding without first obtaining a Release of Bond from the Guam Department of Labor.

(C) A Letter of Credit from a Banking Institution licensed to do business on Guam. The Letter of Credit must designate the Guam Department of Labor as the beneficiary. The Department of Labor may withdraw funds from accounts established in this way without the consent of the employer, in order to satisfy unpaid wages or to effectuate the repatriation of workers.

(D) A Cashier's Check or Postal Money Order made payable to the Treasurer of Guam.

(4) Release of Bonds. The repatriation bond required shall be released no sooner than sixty (60) days after the employer provides the Department of Labor with a documentation 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 Department may consult with federal officials to verify departure. Wage bonds or payment bonds shall be released no sooner than sixty days (60) after the employer provides evidence of the completion of a project, as shown by a notice of completion and/or an occupancy permit filed

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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. Bonds may also be released, without any waiting period, to effectuate amendment or replacement of existing bonds with other acceptable bonds. 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. The Director of Labor may waive the Sixty (60) day waiting period at his or her discretion.

(5) Procedures to Claim Funding from a Bond.

(A) Notice to Insurance Carrier. The Wage & Hour Division, upon receiving a complaint against an employer who has posted a Wage Bond or Payment Bond, will notify the Insurance Carrier of potential wage claim. Notification may be made by letter, fax or email.

(B) In cases where wage bonds are submitted in the form of an Insurance Bond, once a wage assessment is completed by the Wage & Hour Division and the employer has indicated that they cannot or will not satisfy the back wages, the Wage & Hour Division will determine if a claim is suitable and if so, notify the Insurance Carrier of their intention to file a claim against the bond.

(C) In cases where Wage Bonds are submitted in the form of Time Certificates of Deposit (TCD) or Letter of Credit, once a wage assessment is completed by the Wage & Hour Division and the employer has indicated that they cannot or will not satisfy the back wages, the Wage & Hour Division will determine the need to draw the funds and if so, notify the Banking Institution of their intention to file a claim against the bond and withdraw monies collateralized by the TCD or Letter of Credit.

(D) In cases where Wage Bonds are submitted in the form of a Cashier's Check or Postal Money Order, the Wage & Hour Division will request an expedited Direct Payment from the

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Department of Administration for Wage Bond monies held in trust for the employer. The Department of Administration will expedite the Direct Payment request and issue a payment to the Department of Labor no later than 10 days from the date the request is transmitted to the Department of Administration.

(E) In cases where Repatriation Bonds are submitted in the form of an insurance bond, once a situation is identified where the employer is no longer contactable or has indicated that they cannot or will not repatriate the workers to their point of hire, ALPCD will determine the need to draw the funds for the repatriation of workers covered under the such bond and will notify the Insurance Carrier of their intention to file a claim on the bond.

(F) In cases where Repatriation Bonds are submitted in the form of Time Certificates of Deposit (TCD) or Letter of Credit, once a situation is identified where the employer is no longer contactable or has indicated that they cannot or will not repatriate the workers to their point of hire, ALPCD will determine the need to draw the funds and if so, notify the Banking Institution of their intention to file a claim against the bond and withdraw monies collateralized by the TCD or Letter of Credit.

(G) In cases where Repatriation Bonds are submitted in the form of a Cashier's Check or Postal Money Order, ALPCD will request an expedited Direct Payment from the Department of Administration for Repatriation Bond monies held in trust for the employer. The Department of Administration will expedite the Direct Payment request and issue a payment to the airline identified by ALPCD, no later than 10 days from the date the request is transmitted to the Department of Administration.

(H) In cases where Wage Bonds and Repatriation Bonds are submitted in the form of a Cashier's Check or Postal Money Order and have been combined into one instrument, the Department of Administration and the Department of Labor will be guided by the bonding amounts specified in synopsis prepared during the adjudication of the temporary labor certification for

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that particular employer.

(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 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 shall 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.

(4) Applications for Certification which contain an employment scenario in which the Temporary Alien Worker will not be a direct employee of the petitioner will not be recommended for approval to the Governor.

(e) Recommendation to the Governor. Upon review and approval of an Application for Certification by the Department of Labor, such

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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 assign appropriate validity dates on the certification and notify the employer submitting such Application within fifteen working days of the Governor's determination. Such notification shall include the GDOL 750 form signed by the Director of Labor and the Governor and a Transmittal letter from the Governor which indicates the action taken on the application and shall indicate that the employer should submit all documents together with the employer's Application to the appropriate U.S. Citizenship & Immigration 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, on the transmittal letter, as to why the Application was denied, and advise the employer of the right to appeal the determination to the U.S. Citizenship & Immigration Service.

§ 7105. Registration of Temporary Alien Workers; Identification Badges.

Once certification is obtained by the employer, it shall be the

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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. 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.

(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. The Director's signature on the identification badge shall constitute approval of the application.

(A) Information Required. The following information shall be required upon the form submitted in an Application for Registration:

(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

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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) or other job training programs 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

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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 bearing a certification of translation referencing the English version of the contract. Such certification of translation must contain contact information of the translator to facilitate verification. Employers may use contracts pre-approved by ALPCD for which certification of translation will not be required;

(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.

(iv) Documentation that demonstrates compliance with Guam Department of Public Health & Social Services Health Screening requirements for the worker(s) seeking registration.

(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.

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(E) An employer's failure to comply with any of the assurances given during registration may be construed as a violation of the regulations and may result in civil penalties, revocation of the worker's registration and/or referral for prosecution or other administrative action.

(3) Registration Fee. A non-refundable fee, pursuant to 22 GCA § 7119, shall be paid to the Department of Labor upon the registration of any Temporary Alien Worker. Payment must be made in the form of a Cashier's Check or Postal Money Order made payable to the Treasurer of Guam.

(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. Department of Homeland Security 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. Any costs associated with the testing of workers will be paid by the petitioning employer.

(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 but in no case shall the period exceed the period in which the workers has been granted by the U.S. Citizenship and Immigration Service on their form I-797. 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. Registration shall be considered immediately void in cases where the worker has violated the terms of the labor certification, separated from employment or has been deported by the U.S. Department of Homeland Security.

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(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. The employer shall ensure that 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, attached to the front of the Temporary Worker's safety helmet, or in an armband ID holder.

(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 employer 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

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affidavit is true; and,

(B) Pay Ten Dollars (\$10.00) to cover the costs of replacing the identification badge.

(f) Temporary ID Cards. The Department of Labor may, in lieu of Identification badges, issue Temporary ID cards in cases where issuance of regular identification badges cannot be done in a timely manner. These situations include instances of severe application backlog, badge supply shortages, natural disasters or equipment failure.

(1) Such temporary ID cards will be on a form approved by the Director of Labor and shall bear the signature of the Administrator of the Alien Labor Processing & Certification Division or the Director of Labor.

(2) Temporary ID cards may only be considered valid if accompanied by the worker's valid passport or a legible clear photo copy of the visa page and I-94 issued by U.S. Customs and Border protection.

§ 7106. 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 authorized to stay in the United States, 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.

(a) Once an I-129 for extension has been properly filed with the U.S. Citizenship and Immigration Service, the Temporary Alien Worker may be allowed to continue working by requesting for and obtaining a Temporary ID from the Department of Labor.

(b) When renewing Registration, the employer need not submit new copies of the passport and Employment Contract, provided that there have been no changes to these documents.

§ 7107. Exit Clearance.

At least 15 days prior to the departure of a Temporary Alien

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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, or the Director's authorized representative. Before issuing an Exit Clearance, the Department of Labor shall require an attestation 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.

§ 7108. Living Arrangements.

Any employer having certification for more than five Temporary Alien Workers in Guam shall make lodging and meals available to its employees in Guam. Provided, however, that the employer may opt to provide only lodging if the employees desire to provide their own meals. In situations where only lodging is provided, the employer must notify the Department of Labor in writing of such arrangement. The Department of Labor may require the employer to provide meals, in spite of the arrangement, if the Department feels that such arrangements have become adverse to the health and welfare of the workers. Lodging and meals, if applicable, shall be in compliance with the laws and regulations of Guam and the United States relating to sanitation, health and safety. The employer's facilities and staff used in providing such lodging and meals to the employees shall be subject to permitting requirements and unimpeded unannounced inspection by the Department of Labor, Public Health and Social Services, the Guam Environmental Protection Agency and U.S. Immigration & Customs Enforcement.

(a) Temporary Alien Workers Required to Live in Group Quarters. Any Temporary Alien Worker employed by an employer required to make lodging available to its employees must reside in a facility 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

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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) Charges for Lodging and Meals. The employer shall be entitled to recover its costs in providing lodging and meals, if applicable, to an employee but such amount shall not exceed the actual cost incurred by the employer in providing lodging and meals (if applicable) to the employee.

(1) If the charge for lodging and/or meals exceeds 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 charge an employee. Once satisfied that the employer's charges are appropriate, the Director of Labor will issue a notice approving such charges and it shall be the employer's responsibility to provide a copy of the notice to the employee. The employee shall have the right to appeal the charges should they have countervailing evidence to refute the employer's computations.

(c) Deduction from worker's pay. The employer may deduct the charges for lodgings and/or meals under subsection b above, from the employee's pay only after authorization by the employee for such deductions is filed, in writing, with the Department of Labor.

§ 7109. 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,

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but such passport, if so held, shall be returned to the Temporary Worker immediately upon request.

§ 7110. 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,

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(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.

§ 7111. 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, physical or electronic, 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.

§ 7112. 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.

§ 7113. Penalties.

Any violation of these Rules and Regulations may be subject to an administrative penalty under this Chapter. A violation of these rules and Regulations may subject the violator to a fine of not more than Five Hundred Dollars (\$500.00) for each such violation.

As provided for in 22 GCA § 7118.1 (b) and (c), an employer who is a persistent violator of these Rules and Regulations is guilty of a misdemeanor, and upon conviction shall be imprisoned for not more than six (6) months or shall pay a fine of not more than Ten Thousand Dollars (\$10,000.00), or shall suffer both imprisonment and fine. A persistent

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violator will be referred by the Department of Labor to the Attorney general for investigation and prosecution. A 'persistent violator' means an employer who commits, with criminal negligence as defined in 9 GCA, § 4.30, a second violation within any twelve (12) month period immediately preceding the second violation.

In the event of a violation of these Rules and Regulations, the offender will be served with a notice of violation, commonly referred to as a citation, which details the violation and the level of fine to be imposed. The offender shall have the right to an administrative hearing conducted by the Director of Labor. The offender may either pay the fine, or appeal in writing, within fifteen (15) calendar days from the receipt of the notice of violation, to the Director of Labor, requesting a hearing to present facts and law in defense of the offender. The offender shall have the right to representation of counsel during the hearing.

In addition to any other penalty under these Rules and Regulations or any other law or regulation applicable in Guam, the Director of Labor may refer the violator to the Guam Contractors Licensing Board, the United States Attorney in Guam and/or the U.S. Department of Homeland Security for prosecution or other disposition of such violator.

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 (3) years.

§ 7114. 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

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statement of the employer's or Temporary Worker's right to present evidence in its or his/her defense. The Director may opt to convene a panel to hear testimony, however, the final decision rests with the Director of Labor as the Hearing Officer.

§ 7115. 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.

§ 7116. 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.

§ 7117. 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.

§ 7118. Limitations of Temporary Alien Workers.

The employer may not utilize his Temporary Alien Workers in ways which would violate any of the terms of the job offer on the labor certification granted by the Governor. Specifically the Temporary alien worker must:

- (a) Perform work only on approved job sites listed on the project summary sheet on file with the Department of Labor.
- (b) Perform only those job duties listed on the labor certification approved by the Governor.

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(c) Perform work only for the employer listed on the labor certification approved by the Governor.

§ 7119. Mandatory Employer Participation.

Employers may be summoned to mandatory meetings held by the Department of Labor. To accomplish this, the Department must notify an employer at least seven calendar days in advance of a mandatory meeting. Such notice may be served in the form of a letter sent to the address of record or electronically to the fax or email listed on the Employer's Workplace Monthly Report. The employer may attend in person or may send a responsible management employee to represent the company. Employers who fail to attend such mandatory meetings, after being served proper notice, may be subject to civil penalties under § 7113 of these regulations.

§ 7120. Additional Project Requests.

Employers may request that projects be added to their existing Project Summary Sheets in order to allow their existing Temporary Alien Workers to perform services on new projects.

(a) Additional Project Request: The employer must submit the following:

(1) Two copies of the project contract. If the contract is a sub-contract, the prime contract must be attached.

(2) A clear location sketch to the project site.

(3) Wage Bonding in the amount of four percent (4%) of the gross project contract amount.

(4) Two copies of a revised Project Summary Sheet which has been updated with the new project(s) and updated information on the percentage of completion of existing projects.

(b) The Department of Labor will review the projects for suitability with the employer's Temporary Alien workforce and may opt to verify the existence of such project(s).

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(c) If the additional project request is approved, the Department of Labor will return a copy of the revised project summary and the project contract to the employer bearing a notification of approval.

§ 7121. Repeal of Policy.

This amended policy supersedes all previous issuance and additionally repeals 17 GAR Chapter 2, § 2101 thru § 2127 in its entirety as regulations in Chapter 2 are obsolete.
