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DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2606–17; DHS Docket No. USCIS–2012–0010]

RIN 1615–ZB43

Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Years 2018 Through 2020

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notification of numerical limitations.

SUMMARY: The Secretary of Homeland Security announces the annual fiscal year numerical limitations for the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW–1) nonimmigrant classification for the remainder of the transition period, which is scheduled to end on December 31, 2019. This document announces the mandated annual reduction of the CW–1 numerical limitation (also known as the CW–1 cap) and ensures that CNMI employers and employees have sufficient information regarding the maximum number of CW–1 transitional workers who may be granted status during the remainder of the transition period, which includes Fiscal Years (FYs) 2018–2019 and the first 3 months of FY 2020. For FY 2018, the cap is set at 9,998. For FY 2019, the cap is set at 4,999. For FY 2020, the cap is set at 2,499 and will be in effect until the end of the transition period on December 31, 2019.

DATES: Effective November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Paola Rodriguez Hale, Adjudications Officer (Policy), Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, 20 Massachusetts Avenue NW., Washington, DC 20529–2060. Contact telephone 202–272–8377.

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) extended U.S. immigration law, with limited exceptions, to the CNMI and provided CNMI-specific provisions affecting foreign workers. *See* Public Law 110–229, 122 Stat. 754, 853–854. The CNRA provided for a transition period to phase out the CNMI's nonresident contract worker program and phase in the U.S. Federal immigration system in a manner that minimizes adverse economic and fiscal effects and maximizes the CNMI's potential for future economic and business growth. *See* sections 701 and 702(a) of the CNRA.

The CNRA authorized the Secretary of Homeland Security to create a nonimmigrant classification that would ensure adequate employment in the CNMI during the transition period. *See* section 702(a) of the CNRA; 48 U.S.C. 1806(d). The Department of Homeland Security (DHS) published a final rule on September 7, 2011, amending the regulations at 8 CFR 214.2(w) to implement a temporary, CNMI-only transitional worker nonimmigrant classification (CW classification, which includes CW–1 for principal workers and CW–2 for spouses and minor children). *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification,* 76 FR 55502 (Sept. 7, 2011).

The CNRA mandated an annual reduction in the number of permits issued per year and the total elimination of the CW nonimmigrant classification by the end of the transition period. *See* 48 U.S.C. 1806(d)(2). At the outset of the transitional worker program, DHS set the CW–1 numerical limitation (also known as the CW–1 cap) for FY 2011 at 22,417 and for FY 2012 at 22,416. DHS announced these annual caps in DHS regulations at 8 CFR 214.2(w)(1)(viii)(A) and (B). DHS subsequently published annual caps by **Federal Register** notice. *See* 8 CFR 214.2(w)(1)(viii)(C).

The CNRA directed the U.S. Secretary of Labor to determine whether an extension of the CW program for an additional period of up to 5 years beyond the expiration of the initial transition period on December 31, 2014, was necessary to ensure that an adequate number of workers will be available for legitimate businesses in the CNMI. The CNRA further provided the Secretary of Labor with the authority to provide for such an extension through notice in the **Federal Register**. On June 3, 2014, the Secretary of Labor extended the CW program for an additional 5 years, through December 31, 2019. *See Secretary of Labor Extends the Transition Period of the Commonwealth of the Northern Mariana Islands-Only Transitional Worker Program,* 79 FR 31988 (June 3, 2014). Since the Secretary of Labor extended the CW program at least until December 31, 2019, DHS decided to preserve the status quo, or current conditions, rather than aggressively reduce CW–1 numbers for FY 2015. DHS therefore reduced the CW–1 cap nominally by one, resulting in an FY 2015 limit of 13,999. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2015,* 79 FR 58241 (Sept. 29, 2014).

On December 16, 2014, Congress amended the law to extend the transition period until December 31, 2019. *See* Consolidated and Further Continuing Appropriations Act, 2015, Public Law 113–235, sec. 10, 128 Stat. 2130, 2134 (codified at 48 U.S.C. 1806(d)). Congress also eliminated the Secretary of Labor's authority to provide for future extensions of the CW–1 program, requiring the CW–1 program to end (or sunset) on December 31, 2019. *See id.*

For FY 2016, DHS reduced the cap by 1,000 to a limit of 12,999. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2016,* 80 FR 63911 (Oct. 22, 2015). The CW–1 cap was met for the first time in FY 2016.[1] As a result, DHS preserved the status quo and reduced the cap for FY 2017 by only one to 12,998. *See Commonwealth of the Northern Mariana Islands Transitional Worker Classification (CNMI)-Only Transitional Worker Numerical Limitation for Fiscal Year 2017,* 81 FR 60581 (Sept. 2, 2016). In the **Federal Register** notice announcing the CW–1 cap for FY 2017, DHS explained that the nominal

[1] *See* ''USCIS Reaches CW–1 Cap for Fiscal Year 2016,'' *available at https://www.uscis.gov/news/alerts/uscis-reaches-cw-1-cap-fiscal-year-2016.*

reduction would help preserve access to foreign labor in the CNMI, and emphasized the statutory requirement to reduce the annual cap to zero no later than the end of calendar year 2019. DHS also provided notice to CNMI employers and CW–1 workers warning of potential significant reductions in the number in the annual cap in the years ahead. Shortly thereafter, on October 14, 2016, the CW cap was met for FY 2017, only 2 weeks into the fiscal year.[2]

II. Maximum Number of CW–1 Nonimmigrant Workers for Fiscal Years 2018 Through 2020

The CNRA requires an annual reduction in the number of transitional workers but does not mandate a specific numerical reduction. *See* 48 U.S.C. 1806(d)(2). In addition, DHS regulations provide that the CW–1 cap for any fiscal year will be less than the number established for the previous fiscal year, and that the adjusted number will be reasonably calculated in DHS's discretion to reduce the number of CW–1 nonimmigrant workers to zero by the end of the program. 8 CFR 214.2(w)(1)(viii)(C). DHS may adjust the cap for a fiscal year or any other period, at any time by publishing a document in the **Federal Register**, as long as the number is less than the cap for the previous fiscal year. *See* 8 CFR 214.2(w)(1)(viii)(D).

As noted previously, Congress has mandated that the transition period end on December 31, 2019, without the possibility of an administrative extension. *See* Public Law 113–235, sec. 10 (codified at 48 U.S.C. 1806(a)(2), (d)). Given this firm sunset date and the CNRA's requirement to reduce the number of transitional workers to zero by the end of the transition period, DHS believes it is now appropriate to publish a reduction plan to inform the public of the number of CW–1 workers available during each of the fiscal years for the remainder of the transition period. *See* 48 U.S.C. 1806(d)(2). DHS believes that publishing a reduction plan of the CW–1 cap over the remaining two and one-quarter fiscal years will provide employers with knowledge of the availability of CW workers and help them adjust their workforce needs before the transition period ends.

DHS has set the CW–1 cap for FY 2018 at 9,998. For FY 2019, the cap is set at 4,999. For FY 2020, the cap is set at 2,499 and will be in effect until the transition period ends on December 31, 2019. DHS considered an approach similar to FY 2017 of a nominal reduction only for the next fiscal year, consistent with DHS's prior goal of best ensuring that there are enough CW–1 workers for future fiscal years until the end of the program. However, at this point in time, with little over two years remaining in the transition period, DHS has decided that an orderly reduction over the remaining years of the transition period is the most appropriate course of action. DHS made this decision based on the need to reduce the number of CW–1 nonimmigrant workers to zero by the end of the transition period, and consistent with the warning DHS provided in the September 2016 **Federal Register** document that CNMI employers and CW–1 workers should plan for more significant reductions in the annual numerical limitation in the years ahead. DHS believes that this approach will further encourage the recruitment of U.S. workers and the transition into the U.S. immigration system, consistent with the goals of the CNRA and the general policy in Executive Order 13,788, Buy American and Hire American, 82 FR 18837, 18838 (Apr. 21, 2017), ''to protect the interests of United States workers in the administration of our immigration system.''

DHS also notes that Congress recently revised the CW–1 statute without extending the transition period. The Northern Mariana Islands Economic Expansion Act[3] (the NMIEEA), which was enacted into law on August 22, 2017, revised the CW–1 visa classification to, among other things, (1) add 350 CW–1 visas to the fiscal year (FY) 2017 CW–1 cap for purposes of extending certain existing CW–1 permits, thus raising the total number of visas that may be issued from 12,998 to 13,348;[4] and (2) prohibit the CW–1 classification from being available to workers who will be performing jobs classified as ''construction and extraction occupations'' as defined in the U.S. Department of Labor's Standard Occupational Classification (SOC) system other than to extend CW–1 permits of such workers first issued before October 1, 2015.

DHS reviewed this new legislation to consider its effect, if any, on the CW–1 FY 2018 cap. Congress added CW–1 visas to the FY 2017 cap, creating a new baseline of 13,448, yet it did not extend the transition period beyond the current sunset of December 31, 2019. Although the increase in the FY 2017 cap meant that DHS could have set the FY 2018 cap as high as 13,347, DHS did not do so for the reasons set forth above.

Notably, Congress also banned employers of new construction and extraction occupation workers from using the CW–1 classification. As described by the NMIEEA's sponsor in the Congressional Record, the bar on construction and extraction workers intends to require construction companies to fill new positions (including those filled by CW–1 workers after October 1, 2015) with non-CW–1 workers.[5] As the construction worker bar will significantly reduce demand for the program compared to what it would be absent enactment of the NMIEEA, the new law will help mitigate potential harmful effects on CNMI employers resulting from the cap reductions for FY 2018 and subsequent years provided in this document. In setting the FY 2018 at 9,998, DHS is reducing the CW–1 cap by 3,000, which represents a reduction of about a quarter of the number for FY 2017. The FY 2019 cap, set to 4,999, reduces the FY 2018 cap by half. The final allocation for the first quarter of FY 2020 reduces the FY 2019 cap by half and is set to 2,499. A cap reduction in this manner complies with the regulatory requirement that the number in each fiscal year be reasonably calculated in DHS's discretion to reduce the number of CW–1 nonimmigrants to zero by the end of the transition period.

The FY 2018 cap for CW–1 nonimmigrant workers will be in effect beginning on October 1, 2017. DHS retains the ability to use its discretion to adjust the cap for a fiscal year or other period at any time by notice in the **Federal Register**, as long as the new cap is less than the one established for the previous fiscal year, and is a number reasonably calculated to reduce the number of CW–1 nonimmigrants to zero by the end of the transition period. *See* 8 CFR 214.2(w)(1)(viii)(C) and (D). Consistent with the rules that apply to other nonimmigrant worker visa classifications, if the cap for the fiscal year is not reached, the unused numbers do not carry over to the next fiscal year. *See* 8 CFR 214.2(w)(1)(viii)(E).

Generally, each CW–1 nonimmigrant worker with an approved employment

[2] *See* ''USCIS Reaches CW–1 Cap for Fiscal Year 2017,'' *available at https://www.uscis.gov/news/alerts/uscis-reaches-cw-1-cap-fiscal-year-2017.*

[3] *See* Northern Mariana Islands Economic Expansion Act, H.R. 339, 115th Cong. (1st Sess. 2017) (amending Section 6 of Public Law 94–241, 48 U.S.C. 1806) (Aug. 22, 2017).

[4] The additional 350 visas are immediately and exclusively available to current CW–1 workers who are applying to extend their status and whose petition validity period expires between August 23 and September 30, 2017. Of these additional visas, 60 are reserved for ''healthcare practitioners and technical occupations'' and 10 are reserved for ''plant and system operators'' as those terms are defined in the SOC system.

[5] 163 Cong. Rec. E1132 (daily ed. Aug. 15, 2017) (statement of Delegate Sablan).

start date that falls within FY 2018 (October 1, 2017–September 30, 2018) will be counted against the new cap of 9,998. Counting each CW–1 nonimmigrant worker in this manner will help ensure that USCIS does not approve requests that would exceed the cap of 9,998 CW–1 nonimmigrant workers granted such status in FY 2018.

This document does not affect the current immigration status of foreign workers who have CW–1 nonimmigrant status. Such foreign workers, however, will be affected by this document when their CNMI employers file:

- For an extension of their CW–1 nonimmigrant classification; or
- A change of status from another nonimmigrant status to that of CW–1 nonimmigrant status.

This document does not affect the status of any individual currently holding CW–2 nonimmigrant status as the spouse or minor child of a CW–1 nonimmigrant worker. This document also does not directly affect the ability of any individual to extend or otherwise obtain CW–2 status, as the cap applies to CW–1 principals only. This document, however, may indirectly affect individuals seeking CW–2 status since their status depends on the CW–1 principal's ability to obtain or retain CW–1 status.

Elaine C. Duke,

Acting Secretary of Homeland Security.

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FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–1578]

RIN 7100 AE–85

Rules Regarding Delegation of Authority

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is amending its Rules Regarding Delegation of Authority, in connection with the amendment to the Board's Rules of Organization (published elsewhere in this issue of the **Federal Register**), to provide a modified quorum procedure during exigent circumstances.

DATES: The rule is effective November 22, 2017.

FOR FURTHER INFORMATION CONTACT: Laurie Schaffer, Associate General Counsel, (202) 452–2272, or Daniel Hickman, Counsel, (202) 973–7432, Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. For the hearing impaired only, Telecommunication Device for Deaf (TDD) users may contact (202) 263–4869.

SUPPLEMENTARY INFORMATION: The Board consists of up to seven members appointed by the President, by and with the advice and consent of the Senate, as provided in the Federal Reserve Act (Act).[1] The Act does not define a quorum of the Board, and authorizes the Board to make all rules and regulations necessary to enable the Board effectively to perform its duties and functions.[2] For many years, the Board defined a quorum to be a majority (four members) of its authorized strength of seven members. In 2003, the Board revised its definition of quorum of the Board to be a majority of the Board members currently in office, unless there are five members in office, in which case a quorum would be four members.[3] This modification allowed the Board to function with fewer than four members in office and enhanced the Board's ability to function during emergencies.

Over the past decade, the Board has had to operate with fewer than five members on several occasions.[4] Based on this experience, the Board has determined that substantial vacancies present administrative and logistical challenges that make it difficult to conduct routine business and efficiently manage operations, particularly with the Board's traditional reliance on a 3-member committee structure. In light of these considerations, the Board has reconsidered its quorum practice and decided to amend its definition of a quorum [5] to provide that a quorum of the Board is four members, unless there are three or fewer members in office, in which case a quorum would be all members in office. This revised definition will facilitate the Board's ability to continue to function efficiently during periods of substantial vacancies on the Board. This revision does not alter the number of Board members required to constitute a quorum or the functioning of the Board's committee structure in normal operating environments (that is, when five or more members are in office).

Since this revision may make it more difficult to convene a quorum of the Board under exigent circumstances, the Board also has added a modified definition of quorum providing that, in an emergency situation, a quorum of the Board consists of a majority of the Board members in office.[6] An emergency situation is defined as a situation when action on a matter is necessary to prevent, correct, or mitigate serious harm to the economy or the stability of the financial system, and action is required before the full Board can convene. As part of this final rule, the Board is adding a provision to its regulations specifying that the Chair (or the Vice Chair, if the Chair is unavailable) would be authorized to determine when an emergency situation exists.

The revised rule relates solely to the internal procedure of the Board, and, accordingly, the public notice, public comment and delayed effective date provisions of the Administrative Procedure Act do not apply. *See* 5 U.S.C. 553(b) and (d). Because public notice and comment is not required, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also does not apply to this action.

List of Subjects in 12 CFR Part 265

Authority delegations (Government agencies), Banks, banking.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 265 as follows:

PART 265—RULES REGARDING DELEGATION OF AUTHORITY

■ 1. The authority citation of part 265 continues to read as follows:

Authority: 12 U.S.C. 248(i) and (k).

■ 2. Section 265.4(c) is added to read as follows:

§ 265.4 Functions delegated to Board members.

* * * * *

(c) *Exigent circumstances.* The Chairman is authorized to determine when an emergency situation exists for purposes of section 2(b)(2) of the Board's Rules of Organization. If the Chairman is unavailable or unable to determine that an emergency situation exists, then the Vice Chairman is authorized to determine when an emergency situation exists.

[1] *See* 12 U.S.C. 241.

[2] *See* 12 U.S.C. 248(i).

[3] 66 FR 37686 (Jul 19, 2001), as amended at 68 FR 24743 (May 8, 2003).

[4] Since the current structure of the Board was established in 1936, the Board has had fewer than five members on only a few occasions for a short period of time and the Board has never had fewer than four members.

[5] In a document published elsewhere in this issue of the **Federal Register**.

[6] In a document published elsewhere in this issue of the **Federal Register**.