



9111-97

DEPARTMENT OF HOMELAND SECURITY

8 CFR Part 214

[CIS No. 2565-15; DHS Docket No. USCIS-2012-0010]

RIN 1615-ZB43

Commonwealth of the

**Northern Mariana Islands (CNMI)-Only Transitional Worker Numerical Limitation for
Fiscal Year 2016**

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

ACTION: Notification of numerical limitation.

SUMMARY: The Secretary of Homeland Security announces that the annual fiscal year numerical limitation for the Commonwealth of the Northern Mariana Islands (CNMI)-Only Transitional Worker (CW-1) nonimmigrant classification for fiscal year (FY) 2016 (Oct. 1, 2015 – Sept. 30, 2016) is set at 12,999. This document announces the mandated annual reduction of the CW-1 numerical limitation and provides the public with additional information regarding the new CW-1 numerical limit. This document ensures that CNMI employers and employees have sufficient information regarding the maximum number of foreign workers who may be granted CW-1 transitional worker status during FY 2016.

DATES: *Effective Date:* [Insert date of publication in the FEDERAL REGISTER].

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) 272-1470.

SUPPLEMENTARY INFORMATION:

I. Background

Title VII of the Consolidated Natural Resources Act of 2008 (CNRA) extended U.S. immigration law to the CNMI and provided CNMI-specific provisions affecting foreign workers. See Pub. L. No. 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(b) and 702(a) of the CNRA.

The CNRA authorized the Department of Homeland Security (DHS) 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). 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 mandates an annual reduction in the allocation of the number of permits issued per year and the total elimination of the CW nonimmigrant classification by December 31, 2019. See section 702(d)(2) of the CNRA, as amended by the Consolidated And Further Continuing Appropriations Act, 2015, Pub. L. No. 113-235, § 10, 128 Stat. 2130, 2134 (Dec. 16,

2014); 48 U.S.C. 1806(d)(2). At the outset of the transitional worker program, DHS set the CW-1 numerical limitation for FY 2011 at 22,417 and for FY 2012 at 22,416. DHS announced these annual numerical limitations in DHS regulations at 8 CFR 214.2(w)(1)(viii)(A) and (B).

DHS subsequently opted to publish any future annual numerical limitations by Federal Register notice. See 8 CFR 214.2(w)(1)(viii)(C). Instead of developing a numerical limit reduction plan, DHS determined that it would instead assess the CNMI's workforce needs on a yearly basis during the transition period. Id. This approach to the allocation system ensured that CNMI employers had an adequate supply of workers to better facilitate a smooth transition into the federal immigration system. It also provided DHS with the flexibility to adjust to the future needs of the CNMI economy and to assess the total foreign workforce needs based on the number of requests for transitional worker nonimmigrant classification received following implementation of the CW-1 program

DHS followed this same rationale for the FY 2013 and FY 2014 fiscal year numerical limitations. After assessing all workforce needs, including the opportunity for economic growth, DHS set the CW-1 numerical limitation at 15,000 and 14,000 respectively for FY 2013 and FY 2014. See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2013, 77 FR 71287 (Nov. 30, 2012) and CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2014, 78 FR 58867 (Sept. 25, 2013). The FY 2013 and FY 2014 numerical limitations were based on the actual demonstrated need for foreign workers within the CNMI during FY 2012. See 77 FR 71287, 78 FR 58867.

The CNRA directed that the U.S. Secretary of Labor determine whether an extension of the CW program for an additional period of up to 5 years is necessary to ensure that an adequate number of workers will be available for legitimate businesses in the CNMI, and further provided

the Secretary of Labor with the authority to provide for such an extension through notice in the Federal Register. See 48 U.S.C. 1806(d)(5). 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).

The FY 2015 numerical limitation was based on a number of factors, including:

- The Department of Labor’s extension of the CW program;
- The CNMI’s labor market needs; and
- The CNRA’s mandate to annually reduce the number of transitional workers until the end of the extended transitional worker program. See CNMI-Only Transitional Worker Numerical Limitation for Fiscal Year 2015, 79 FR 58241 (Sept. 29, 2014).

Since the Secretary of Labor significantly 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 numerical limitation nominally by one, resulting in an FY 2015 limit of 13,999. See id.

On December 16, 2014, Congress amended the CNRA to extend the transition period until December 31, 2019. See Consolidated and Further Continuing Appropriations Act of 2015, Pub. L. No. 113-235, § 10, 128 Stat. 2130, 2134 (amending 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.

II. Maximum Number of CW-1 Nonimmigrant Workers for Fiscal Year 2016

The CNRA requires an annual reduction in the number of transitional workers but does

not mandate a specific reduction. See 48 U.S.C. 1806(d)(2). In addition, DHS regulations provide that the numerical limitation for any fiscal year will be less than the number established for the previous fiscal year, and that it will be reasonably calculated 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 numerical limitation at any time by publishing a notice in the Federal Register, but may only reduce the figure. See 8 CFR 214.2(w)(1)(viii)(D).

To comply with these requirements, meet the CNMI's labor market's needs, provide opportunity for growth, and preserve access to foreign labor, DHS has set the numerical limitation for FY 2016 at 12,999. DHS arrived at this figure by taking the number of CW-1 nonimmigrant workers needed based on the FY 2015 limitation of 13,999, and then moderately reducing it by 1,000 or approximately 7.2 percent. The new number will accommodate continued economic growth within the CNMI that might result in a need for additional CW-1 nonimmigrant workers during FY 2016. Therefore, CNMI businesses can continue to hire CW-1 workers to meet their current and future need for foreign workers.

In setting this new numerical limitation for FY 2016, DHS considered its effect in conjunction with the published media reports indicating that the CNMI economy continues to grow¹ and that any reduction in the number of CW-1 workers available will have to account for new investments and the expansion of existing businesses in order to support such economic growth.²

For the aforementioned reasons, DHS recognizes that any numerical limitation must

¹ See Cherrie Anne E. Villahermosa, CNMI Sustaining Economic Growth Momentum, Marianas Variety, June 30, 2015, available at <http://pidp.eastwestcenter.org/pireport/2015/June/06-30-19.htm>.

² See Raquel C. Bagnol, Labor Chief Says CW Allocation Needs to be Revisited, Marianas Variety, June 17, 2015, available at <http://www.mvariety.com/cnmi/cnmi-news/local/77978-labor-chief-says-cw-allocation-needs-to-be-revisited>.

account for the fact that the CNMI economy continues to be based on a workforce composed primarily of foreign workers. Therefore, any new fiscal year numerical limit should allow for economic growth until the end of the transitional worker program, which is now December 31, 2019. DHS must reduce the annual numerical limitation as statutorily mandated, but also should ensure that there are enough CW-1 workers for future fiscal years until the end of the program.

As noted previously, Congress has mandated that the transition period end on December 31, 2019, without the possibility of an administrative extension of the CW program. See 48 U.S.C. 1806(a), (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 that a prudent approach to the numerical limit for the next fiscal year is to institute a meaningful but moderate reduction in the numerical limitation. As such, DHS believes that a reduction of 1,000 is appropriate for FY 2016. This new baseline preserves access to foreign labor within the CNMI and provides a cushion for demand growth, yet provides a meaningful reduction that aids DHS in the implementation of the mandated cap reductions to zero over the transition period. Accordingly, DHS is reducing the number of transitional workers from the current fiscal year numerical limitation of 13,999, and establishing the maximum number of persons who may be granted CW-1 nonimmigrant status in FY 2016 at 12,999.

The FY 2016 numerical limitation for CW-1 nonimmigrant workers will be in effect beginning on October 1, 2015. DHS still retains the ability to adjust the numerical limitation for a fiscal year or other period, in its discretion, at any time by notice in the Federal Register. See 8 CFR 214.2(w)(1)(viii)(C) and (D). Consistent with the rules applicable to other nonimmigrant worker visa classifications, if the numerical limitation 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 start date that falls within FY 2016³ will be counted against the new numerical limitation of 12,999. Counting each CW-1 nonimmigrant worker in this manner will help ensure that U.S. Citizenship and Immigration Services does not approve requests for more than 12,999 CW-1 nonimmigrant workers.

This document does not affect the current immigration status of foreign workers who have CW-1 nonimmigrant status. 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 numerical limitation 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.

Jeh Charles Johnson,
Secretary.

[FR Doc. 2015-26963 Filed: 10/21/2015 08:45 am; Publication Date: 10/22/2015]

³ FY 2016 refers to the period between October 1, 2015, and September 30, 2016.