

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



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COMMONWEALTH REGISTER

VOLUME 39  
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# COMMONWEALTH REGISTER

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NUMBER 09  
September 28, 2017

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Commonwealth of the Northern Mariana Islands  
Department of Community and Cultural Affairs

Robert H. Hunter, Secretary  
Caller Box 10007  
Capitol Hill, Saipan, MP 96950  
Tel: 670-664-2587

**PUBLIC NOTICE OF CERTIFICATION AND ADOPTION  
OF REGULATIONS OF  
The Department of Community and Cultural Affairs**

PRIOR PUBLICATION IN THE COMMONWEALTH REGISTER  
AS PROPOSED REGULATIONS  
Volume 39, Number08, pp 039851 - 039871, of August 28, 2017

**Regulations of the Department of Community and Cultural Affairs: Chapter 55-60  
Child Care and Development Fund Rules and Regulations.**

**ACTION TO ADOPT PROPOSED REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Department of Community and Cultural Affairs ("DCCA"), HEREBY ADOPTS AS PERMANENT regulations the Proposed Regulations which were published in the Commonwealth Register at the above-referenced pages, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The DCCA announced that it intended to adopt them as permanent, and now does so. (Id.) A true copy is attached. I also certify by signature below that:

as published, such adopted regulations are a true, complete and correct copy of the referenced Proposed Regulations,

and that they are being adopted without modification or amendment

**PRIOR PUBLICATION:** The prior publication was as stated above.

**MODIFICATIONS FROM PROPOSED REGULATIONS, IF ANY:** "None" I further request and direct that this Notice be published in the Commonwealth Register.

**AUTHORITY:** The DCCA is required by the Legislature to adopt rules and regulations regarding those matters over which the DCCA has jurisdiction, including its regulation of the Child Care and Development Fund (DCCA) Program.

**EFFECTIVE DATE:** Pursuant to the APA, 1 CMC sec. 9105(b), these adopted regulations are effective 10 days after compliance with the APA, 1 CMC §§ 9102 and 9104(a) or (b), which, in this instance, is 10 days after this publication in the Commonwealth Register.

**COMMENTS AND AGENCY CONCISE STATEMENT:** Pursuant to the APA, 1 CMC sec. 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

The adopted regulations were approved for promulgation by the Attorney General in the above-cited pages of the Commonwealth Register, pursuant to 1 CMC sec. 2153(e) (To review and approve, as to form and legal sufficiency, all rules and regulations to be promulgated by any department, agency or instrumentality of the Commonwealth government, including public corporations, except as otherwise provided by law).

I DECLARE under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 26th day of September, 2017, at Saipan, Commonwealth of the Northern Mariana Islands.

Certified and ordered by:

  
\_\_\_\_\_  
Robert H. Hunter  
Secretary, Department of Community and Cultural Affairs

  
\_\_\_\_\_  
Date

Filed and  
Recorded by:

  
\_\_\_\_\_  
ESTHER SN. NESBITT  
Commonwealth Registrar

  
\_\_\_\_\_  
Date

CHAPTER 55-60: **CHILD CARE AND DEVELOPMENT FUND RULES AND REGULATIONS**

Part 001 - General Provisions

§ 55-60-001 Purpose

The purpose of these Administrative Rules is to provide guidance for determining eligibility requirements, benefit amounts, and method of determining child care payments for the child care program in compliance with the rules governing the administration and implementation of the Child Care and Development Fund block grant as authorized part of the Omnibus Reconciliation Act of 1990, Pub. L. No. 101-58, Section 5082 and as amended by PRWORA, Pub. L. No. 104-193, Section 9598.

§ 55-60-005 Definitions

- (a) "Activity" means employment, education, job search or job training, vocational or employment training.
- (b) "After-School Care" means a child care program provided after the close of the regular school day during the academic year for children who are enrolled in public or private elementary schools.
- (c) "Application" means the written action by which an individual applies on behalf of his/her family to receive child care services on a form prescribed by the Child Care Program. The application requests information on the total monthly family income, size of the family, ages of family members, employment status or education or training or a combination thereof of the parent applicant or applicants and requires attachments that evidence monthly family income, education, or training status, employment status, and proof, usually birth certificates or passports, of age and citizenship of the applicants.
- (d) "Before-School Care" means a child care program provided before the opening of the regular school day during the academic year for children who are enrolled in public or private elementary schools.
- (e) "Budget Month" means the calendar month from which the Child Care Program shall use the child care payment form to calculate the reimbursable payment for the month.
- (f) "Center-Based Child Care Provider" means a provider licensed or otherwise authorized to provide child care services for fewer than 24 hours per day per child in a non-residential setting.
- (g) "Child" means any person who has not reached the age of thirteen.
- (h) "Child Care" means those situations in which a child care provider has agreed to assume the responsibility for the child's supervision, development, and guidance, apart from and in the absence of the child's parent, for any part of a 24-hour day.
- (i) "Child Care Program" means the CNMI Department of Community and Cultural Affairs that shall administer and implement the Child Care Development Fund (CCDF) activities and provide assistance in compliance with the requirements of federal regulations.
- (j) "Child Care Provider" means any person, 18 years and older, or an agency, or organization and their employees who provide direct care, supervision, and guidance to children apart from and in the absence of the child's parent(s). Child care providers are regulated by the Child Care Licensing Program of the Department of Community and Cultural Affairs to provide child care or are legally exempt from licensure or registration by the same licensing program.

- (k) "Child Care Services" means the care given to an eligible child by an eligible child care provider.
- (l) "Child experiencing homelessness" means a child who is homeless.
- (m) "Director" means a person who has primary responsibility for the daily operations and management for a child care provider, which may include a family child care provider which may serve children from birth to kindergarten entry and children in school-age child care.
- (n) "Educational Program" means a curriculum-based education program established by a school, agency, or business for the purpose of the development of skills and/or academic study necessary for an occupation.
- (o) "Employed" means the parent or legal guardian is engaged in an activity in exchange for wages or salary for at least 30 hours per week.
- (p) "English as a Second Language" (ESL) means the condition where the child and/or the parent (see definition on "parent") have limited English proficiency.
- (q) "Family Child Care Provider" means an individual who provides child care services to 5 or more children for fewer than 24 hours per day per child, as the sole caregiver, in a private residence other than the child's residence.
- (r) "Family" means one or more adults and their minor children, if any, related by blood, marriage, adoption, or judicial decree, who resides in the same household. Related adults other than spouses or unrelated adults residing together shall each be considered a separate family.
- (s) "Federal Poverty Index (FPI) Guidelines" means the official federal statistical definition of poverty which is issued yearly in the Federal Register by the Secretary of the Child Care Program of the Health and Human Services under the authority of 42 U.S.C. 9902(2), OBRA of 1981. It is a simplification of the U.S. Census Bureau's poverty threshold, which is issued for administrative purposes.
- (t) "Full-Time Care" means child care provided for 30 hours or more per week. This does not apply to before-school care, after-school care, and intersession care.
- (u) "Gross Income" means any benefit in cash which is received by the individual as a result of current or past labor or services, business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies.
- (v) "Guardian" means a court appointed legal guardian of the person of the minor child.
- (w) "Homelessness" means as it is defined in section 725 of Subtitle VII-B of the McKinney-Vento Act (42 U.S. C. 11434a).
- (x) "In Home Care Provider" means any individual who provides care in the home of the child.
- (y) "Intersession Care" means child care provided at breaks during the academic year for children who are enrolled in public or private elementary schools, including summer care and holidays.
- (z) "Job Search" is defined as an-activity that demonstrates an individual is actively seeking potential employment. Qualifying job search activities include (but is not limited to) completing job applications in person; completing on-line computer applications at employment agencies and/or community agencies, engaging in interviews, registration at the CNMI Labor Office, and phone inquiries about possible job openings with potential employers. Job search is not to exceed three months.
- (aa) "Job Training, Vocational or Employment Training" means an organized training program (including community college and university education) established by an institution, agency, or business for the purpose of the development of an occupation.

- (bb) "License-Exempt Care" means child care to less than 5 children which is exempt from licensure pursuant to CNMI law and the current state plan and is registered by the Child Care Program.
- (cc) "Licensing Agency" means the department within the CNMI government that approves or disapproves child care licensing in accordance with CNMI law and the Day Care Rules and Regulations, specifically the Department of Community and Cultural Affairs (DCCA).
- (dd) "Parent" means a birth, foster or adoptive parent, guardian, a person acting in the place of a parent, step-parent, or relative who is related to the child by blood, marriage, or adoption, who resides with and is legally responsible for the care, education, and financial support of a child. That designation may remain even when the child or parent is temporarily absent from the home as long as the parent continues to maintain responsibility for the care, education, and financial support of the child. In cases of split custody, it is the parent with whom the child resides with more than 50% of the time. In cases where each parent has custody of the child for an equal amount of time, then both parents must jointly qualify for the program.
- (ee) "Part-Time Care" means child care provided for less than 30 hours per week. This excludes before-school, after-school care and intersession care.
- (ff) "Payment Month" means the calendar month in which the Child Care Program shall issue the child care payment.
- (hh) "Physician" means an individual licensed by the CNMI for the practice of medicine.
- (ii) "Registered" means children, parent, parents, and service providers who are registered with the DCCA Child Care Program and who benefit from the DCCA Child Care Program.
- (jj) "Relative" means related by blood, marriage, or adoption.
- (kk) "Relative Care" means child care provided by legal grandparents, great-grandparents, great aunts, 1st and 2nd cousins, aunts, uncles, and siblings living in a separate residence who are at least 18 years old. Relative child care providers caring for 5 or more children must be licensed.
- (ll) "Sliding Fee Scale" means a system of cost sharing by a family based on income and size of the family in accordance with 45 CFR Subpart 98.42.
- (mm) "School Age" means the chronological age of children enrolled in elementary and junior high school below the age of 13.
- (nn) "Special Needs Child" means a child who is physically or mentally incapable of caring for himself or herself as determined by a health care provider or a Public School System certified psychologist.
- (oo) "State Plan" means the official document submitted to the federal government by the Child Care Program describing the administration of child care services in the CNMI under the Child Care and Development Fund.
- (pp) "Very Low Income" means income that is at or below the 85% of State Median Income Guideline.

§ 55-60-010 Confidentiality

Family income data, employment records, and other family and child records and monthly data reported to the federal government on families receiving subsidized child care services shall remain confidential and saved in locked data files. (This applies to both computerized and paper files.)



§ 55-60-015 Geographical Location

All child care is made available to eligible clients on a CNMI-wide basis § 55-60-020 Scope

Child care services, irrespective of setting, must include:

- (a) Supervision to assure the child's safety, comfort, and health;
- (b) Personal care as appropriate to the child's age and developmental maturity;
- (c) Educational and recreational activities appropriate to the child's age, developmental stage, and degree of physical or mental ability;
- (d) Health and nutritional services which may include breakfast, lunch, dinner, and snacks; health and nutritional education to the child, as well as to the parents or parents; monitoring of health problems; and where appropriate, arranging for medical or psychological screening and consultation.

Part 100 - Application to Child Care Program

§ 55-60-101 Application Process

- (a) Requests for child care services shall be submitted in writing on a form prescribed by the Child Care Program.
- (b) The form shall be dated and signed under penalty of perjury that all the information requested by the Child Care Program to establish eligibility for child care services, as stated on the form, is accurate.
- (c) The form shall be signed by the parent. Applicants are required to submit copies of documents (including but not limited to an employment verification stating hours and hourly rate, paycheck stubs with business name, hours worked and hourly rate, birth certificates, school and/or training documents, 1040 tax return, notarized affidavit of living arrangement, employment contract {if applicable}) for verification. It is the responsibility of the applicant to provide the necessary documentation for verification.
- (d) Applicants shall provide verification of the cost of the selected child care arrangement.
- (e) The date of application shall be the date the signed form and all supporting documents are received by the Child Care Program.
- (f) The date of eligibility shall be determined by the Child Care Program once all required documentation is received and verified and the Child Care Program determines that the family is eligible for subsidized care.
- (g) For applicants determined eligible, child care subsidized payments shall be initiated or arranged as soon as possible, but not later than 30 days from receipt of the payment invoice from the service provider; which is signed by the parent and the provider. Child Care services shall be denied when the applicant does not complete the process of application/determination of eligibility, including but not limited to verification, or withdraws the application or is otherwise ineligible.

§ 55-60-105 Priority Applications

The following sets forth the priorities for serving eligible children:

- (a) Low income families with special needs children
- (b) Homeless families with children
- (c) Families with very low income

§ 55-60-110 Notice of Application Disposition

(a) The Child Care Program shall notify applicants about the applicant's eligibility for child care service within fifteen days after submission of a complete application with all required attachments.

(b) Applicants determined not eligible shall be sent a written notice that contains a statement of the action taken, the reason for the action, the specific rules supporting the action, and the right to appeal the action of the Child Care Program through established administrative appeal procedures.

Part 200 - Eligibility

§ 55-60-201 Eligibility Requirements for Child Care Services

Depending upon availability of funds, children who qualify for child care payments shall meet the following requirements:

- (a) Reside with the parent who is working, attending a job training or an educational program and who has a monthly CNMI gross income that does not exceed Federal Poverty Income Guideline (FPIG) or 85% of the State Median Income for a family of the same size; and
- (b) Be under the age of 13; and
- (c) All parents shall be eligible for child care under this subchapter provided the parents meet the following conditions:
  - (1) Have a monthly gross income that does not exceed the Federal Poverty Income Guideline (FPIG) or 85% of the State Median Income for a family of the same size; and
  - (2) Residency: The family must be living in the CNMI with the intention of making the CNMI their home permanently. Acceptable documentation includes, but is not limited to, utility payment receipts, house rental/mortgage receipts, etc.
  - (3) Citizenship: Only the citizenship and immigration status of the child, who is the primary beneficiary of the child care service, is required for eligibility purposes. The child must be a U.S. citizen or a qualified alien, as defined in Personal Responsibility Work Opportunity Act (PRWORA), to be eligible for childcare assistance. Acceptable documentation includes, but is not limited to, birth certificate or passport.
  - (4) Gainfully employed 30 hours per week or scheduled to start work in 2 weeks; or
  - (5) Need child care for up to 90 calendar days during a break in employment, if employment is scheduled to resume within 90 calendar days; or
  - (6) Job Search: Need child care for up to 90 calendar days during a break in employment and is actively seeking employment;
  - (7) Are enrolled in a job training and educational program (for at least 20 hours per week) or attending an education program on a full time bases (12 hours per semester for the college and five classes per day for the PSS); or

- (8) For parents who are in the final semester of a program and who need less than 12 credits to graduate, they will be considered to be attending full-time for that final semester if in fact they are taking all the credits needed to graduate.
- (9) Are a two-parent family household where one parent is in an approved activity (working, attending job training or an educational-program) and the other parent is determined to have a disability which prevents the parents from providing care for their own children. In such cases, proof of disability and inability to provide child care shall be verified by the written report of a physician, psychologist, psychiatrist, or a territory-licensed care provider. The written report shall be reviewed every two months, and is valid when one parent is participating in an approved activity.
- (10) Eligibility may be re-established for periods not less than 12 months.
- (11) Participation in a mandatory orientation.
- (d) Child care providers shall meet the following conditions in order that child care payments may be authorized:
- (1) For licensed center based and family child care providers:
- (i) Is 18 years old or older;
  - (ii) Afford parents unlimited access to their children during normal hours of provider operation and whenever the children are in the care of the provider;
  - (iii) Completes an application packet (and renewed annually) and submits the following documents:
    - (A) W-9.
    - (B) Current Business License
    - (C) DCCA Child Care License Certificate
    - (D) Center Rate
    - (E) Center Program Policy/Parent Handbook which includes at a minimum the following areas with further guidance as specified by DCCA's Child Care Program using the Caring for our Children: Basics and/or Caring for our Children 3<sup>rd</sup> edition or latest edition.
      - (I) Admission and Enrollment;
      - (II) Supervision;
      - (III) Emergency Evacuation Plan, Drills, and Closing;
      - (IV) Sanitation and Hygiene;
      - (V) Sleeping Position;
      - (VI) Food Handling, Feeding and Nutrition;
      - (VII) Staff Schedule and supervision;
      - (VIII) Smoking Policy;
      - (IX) Evening and Night Care Plan (as applicable).
    - (F) First Aid/CPR Certificate,
  - (iv) Submits to an initial and annual inspection and approval;
  - (v) Must meet at a minimum 35 square footage of indoor learning space per child;
  - (vi) Must meet at a minimum 33% of facility capacity at 75 square footage of outdoor playground space per child.
  - (vii) Subject to DCCA Child Care Program Staff announced and unannounced monitoring visits at least once annually.
- (2) For licensed-exempt family home providers, including in-home providers:
- (i) Is 18 years or older;
  - (ii) Afford parents unlimited access to their children, including written records concerning their children, during normal hours of provider operation and whenever the children are in the care of the provider;
  - (iii) Completes an application packet (and renewed annually) and submits the following documents:

- (A) W-9;
  - (B) Rate that will be charged parents;
  - (C) Current Business License;
  - (D) Police Clearance;
  - (E) Health Clearance;
  - (F) First Aid/CPR Certificate.
- (iv) Submits to an initial and annual inspection and approval;
  - (v) Subject to DCCA Child Care Program staff announced and unannounced visits;
  - (vi) Complete a self-certified checklist which is available from DCCA Child Care Program. Said checklist will then be verified by DCCA Child Care Program staff member.

(e) All types of providers will:

- (1) Have no known history of child abuse or neglect, physical or psychological/psychiatric problems, or criminal convictions that may adversely affect or interfere with the care of children.
- (2) Provide consent to conduct an FBI Finger Print Check, National and Local Sex Offender Registry, child abuse record check and criminal history record check. A child care provider must not have criminal history that poses a risk to children; these include but are not limited to convictions for:
  - (i) Murder, as defined under CNMI or similar offenses as defined in other jurisdictions or as described in Section 1111 of Title 18, United States Code;
  - (ii) Crimes against children as defined under CNMI or similar offenses as defined in other jurisdictions including criminal sex offenses against a minor child and child abuse or neglect.
  - (iii) Violent felonies in which an individual threatens to cause, attempts to cause or causes serious bodily injury, such as physical assault or battery, including spousal abuse;
  - (iv) Sexually violent offenses, such as, rape or sexual assault, as defined by CNMI law or other similar offenses in other jurisdictions;
  - (v) Kidnapping;
  - (vi) Arson;
  - (vii) Violations of the CNMI Minor Children Firearms Control Act, or the CNMI Special Act for Firearms Enforcement (SAFE), or similar offenses in other jurisdictions;
  - (viii) Distribution of a controlled substance to persons under 18 as defined by CNMI law or similar offenses in other jurisdictions;
  - (ix) Any drug related offense committed during the preceding 5 years or has been convicted of a misdemeanor involving child pornography
  - (x) All other criminal histories will be evaluated based on the nature and severity of the incident; the identity of the victim; the length of time since the incident; whether any specific pattern of criminal behavior exists; and specific efforts the individual has made towards rehabilitation.
- (3) Is free of tuberculosis as indicated by a skin test or chest x-ray completed within the last 24 months;
- (4) Have a child care facility or home with an installed smoke detector, unobstructed emergency exits, and an emergency preparedness and evacuation plan.
- (5) Shall attend training and technical assistance activities as a condition of receipt of funds to enhance their personal growth and professional development in order to improve the quality of child care services. All child care service providers must annually participate in at least 30 hours of training and technical assistance as approved by the Child Care Program. This may include workshops, seminars, conference, etc. on health and safety, nutrition, first aid, child abuse and detection, and caring for children with special needs as scheduled and approved by the Child Care Program.

(6) All new providers must complete within 90 days a minimum of 10 hours of Pre-Service Trainings in at least 5 of the following topics, and not less than 1 hour of training per topic: Prevention and control of infectious diseases (including

immunization), Prevention of sudden infant death syndrome and use of safe sleeping practices, Administration of medication, consistent with standards for parental consent, Prevention of and response to emergencies due to food and allergic reactions, Building and physical premises safety, including identification of and protection from hazards that can cause bodily injury such as electrical hazards, bodies of water, and vehicular traffic, Prevention of shaken baby syndrome and abusive head trauma, Emergency Preparedness, Handling and storage of hazardous materials and the appropriate disposal of bio-contaminants, Pre-cautions in transporting children, First Aid and Infant/child Cardiopulmonary Resuscitation, Child Development and Child Abuse and Neglect. Pre-service trainings of at least one hour in each of the aforementioned topics should be completed within the first 180 days of employment and while the provider is completing their training, they may not be left alone with the children without a Child Care Program certified care provider present.

(7) All providers including family members living in the provider's home 18 years and older shall be checked against the Sex Offenders Registry and Notification Act (SORNA) with the Department of Public Safety (DPS). In the event that a family member living in the prospective provider's home is identified as included in the registry, that provider's application is disapproved.

(8) All providers must have a working telephone land line within the building.

(f) Child care providers shall not be one of the following:

- (1) Parents, biological or legal;
- (2) Step-parent living in the household;
- (3) Legal guardians;
- (4) Providers who are not in compliance with territory regulatory requirements;
- (5) Individuals under the age of 18 years; and
- (6) Other individuals determined by the licensing agency and/or the Child Care Program to pose a risk to the health and safety of a child.

(g) The Child Care Program shall:

- (1) Verify that the children and parents meet the eligibility requirements as described in these regulations;
- (2) Determine that the provider selected by the parent is appropriate following the regulations of the licensing agency and the Child Care Program; and
- (3) Review eligibility no less frequently than every 12 months.
- (4) Require a family member to certify that the family assets do not exceed \$1,000,000.00.

#### § 55-60-205 Income Considered in Eligibility Determination

(a) Monthly gross income shall be used to determine eligibility.

(b) Monthly gross income means non-excluded monthly sums of income received from sources such as but not limited to:

(1) "Gross income" means any benefit in cash which is received by the individual as a result of current or past labor or services (before deductions), business activities, interest in real or personal property or as a contribution from persons, organizations, or assistance agencies, such as:

- (i) Wages; and
- (ii) Salary.

#### § 55-60-210 Excluded Monthly Income

The following types of income received in any given month shall be excluded from consideration in determining income eligibility for child care payments;

(a) Money received from the sale of property such as stocks, bonds, a house, or a car unless the person was engaged in the business of selling the property, in which case, the net proceeds would be counted as self-employed income;

(b) Withdrawals of bank deposits;

- (c) Loans;
- (d) Gifts, including in-kind gifts such as free room and board, when the gift is not a form of compensation in lieu of wages or salary;
- (e) Monies received in the form of a nonrecurring lump sum payment including, but not limited to, the following:
  - (1) Income tax refunds, rebates, credits;
  - (2) Retroactive lump sum Social Security, SSI, or unemployment compensation benefits;
  - (3) Retroactive annual adjustment payments in the Veterans' Administration's (VA) disability pensions;
  - (4) Lump sum inheritance or insurance payments;
- (f) Refunds of security deposits on rental property or utilities;
- (g) Earnings of minor children who are members of the household and are students at least half-time shall be excluded even during temporary interruptions in school attendance due to semester or vacation breaks, provided the minors' enrollment will resume following the break,
- (h) Capital gains;
- (i) Loans, grants, and scholarships obtained and used under conditions that prohibit use for current living expenses;
- (j) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the United States Secretary of Education;
- (k) Home produce utilized for home consumption;
  - (1) The value of coupon allotment under the Food Stamp Act of 1977, as amended;
- (m) The value of USDA donated or surplus foods;
- (n) The value of supplemental food assistance under the Child Nutrition Act of 1966 (42 U.S.C. § 1771-1789) and the special food service program for children under the National School Lunch Act, as amended;
- (o) Benefits received from the special supplemental food program for women, infants, and children (WIC) (42 U.S.C. 1786);
- (p) Allowances and payments to participants in programs, other than on-the-job training, under the Work Investment Act (WIA) of 1998 (20 U.S.C. § 9201);
- (q) The earned income of individuals participating in on-the-job training program under the Job Training Partnership Act (JTPA) of 1982 (29 U.S.C. 1501 et seq.) who are between 18 and 19 years of age and under the parental control of another household member;
- (r) Earned income tax credit (EITC) payments received either as a lump sum or recurring payments under section 3507 of the Internal Revenue Code of 1986;
- (s) Financial assistance provided by a program funded in whole or in part under title IV of the Higher Education Act in accordance with Pub. L. No. 99-498;
- (t) Payments or allowances under any federal or local laws for the purpose of energy assistance;
- (u) Assistance payments received as a result of a declared federal major disaster or emergency from the Federal Emergency Management Agency (FEMA), and other comparable disaster assistance provided by any state or local government agency, and disaster assistance organizations;
- (v) Payments made from the Agent Orange Settlement Fund or any other fund established in connection with settling liability claims concerning the chemical Agent Orange (Pub. L. No. 101-201);

- (w) Reimbursements from the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4636);
- (x) Payments received under the Radiation Exposure Compensation Act (Pub. L. No. 101-426) to compensate individuals for injuries or deaths resulting from the exposure to radiation from nuclear testing or uranium mining;
- (y) Payments to individuals participating in the Senior Community Service Employment Program (SCSEP) funded under title V of the Older American Act of 1965 (Pub. L. No. 100-175);
- (z) Payments to volunteers derived from the volunteer's participation in the following program authorized by the Domestic Volunteer Service Act of 1973 (42 U.S.C. § 5011, 4951-4958):
  - (1) Foster grandparent program;
  - (2) Senior companion program; and
  - (3) Volunteers in service to America (VISTA) and AmeriCorps program.
- (aa) Military re-enlistment bonus;
- (bb) Any other payments made in accordance with territory and federal laws that preclude the payments from being counted as income.

§ 55-60-215 Treatment of Income

- (a) All non-excluded income available to the family within a given month shall be considered.
- (b) Eligibility determination based on income status shall be supported by documentation.
- (c) Failure to provide necessary information to verify amount or source of income shall disqualify the family.

Part 300 - Child Care Payment

§ 55-60-301 Method of Computing Child Care Payment

- (a) The family shall provide verification of the child care provider and the child care to the program.
- (b) The Child Care Program will compute the monthly projected cost of the care based on:
  - (1) Need for child care;
  - (2) The type of care provided,
  - (3) The child's age;
  - (4) Whether the care is full day or partial day care service;
  - (5) The child's attendance;
  - (6) The parent's work attendance;
  - (7) The parent's share of the cost of child care in accordance with the Sliding Fee Scale as set forth in the current state plan.
- (c) The projected child care payment rate shall be calculated by:

- (1) Counting the number of employment, education, or job, or vocational or employment training hours to the engaged in by the parent for the month (full time or part time)
- (2) Using the current child care rate table to identify the type of child care for each qualifying child and the payment rate for that type of child care
- (3) The child care amount to be paid each month of eligibility shall be the child care rate on the child care rate table for full time or part time

§ 55-60-305 Child Care Payments

- (a) The payment rate shall be established by the current State Plan.
- (b) Child care payments shall be an expense that is reimbursed to the child care provider.
- (c) The parent's co-payment shall be established by the current Sliding Fee Scale as set forth in the current State Plan.
- (d) When computing the reimbursement amount, the Child Care Program shall establish a reasonable relationship between the need for part-time or full-time care and the conditions for which child care is required.
- (e) The Child Care Program shall issue a Payment Invoice and an attendance form for parent and provider to sign and submit for a reimbursable payment for child care services rendered the previous month. The attendance form must show the number of hours the child is in the care of the service provider. Failure to submit a completed and signed payment invoice and/or an attendance form shall result in no payment.
- (f) A completed signed payment invoice and/or attendance form must be received by the Child Care Program within the first work day of the month. Invoices received after the 1<sup>st</sup> work day of the month will be considered late and will not be processed until the following month.
- (g) The family shall pay its portion of the child care cost.
- (g) Effective Oct. 1, 2009, all parents will pay their co-payments directly to the CNMI Treasury.
- (h) The family shall be responsible for any child care costs in excess of the maximum child care rates as set forth in the current CNMI plan.

Part 400 - Other Requirements

§ 55-60-401 Reporting Changes

A parent who is a recipient of subsidized child care services shall be responsible to report in writing in a prescribed form to the Child Care Program within 10 calendar days of the occurrence of any changes in:

- (a) Monthly gross income and the source of the income;
- (b) Circumstances which may affect the recipient's eligibility for continuing services, including, but not limited to;
  - (i) Changes in employment, educational program, or job, vocational or employment training;
  - (ii) Anticipated changes in the individual's situation that may affect the individual's eligibility for continued child care assistance;



(c) Attendance: Parent shall report in writing to the Child Care Program when their child has more than 5 absences in a month.

§ 55-60-405 Re-determination of Eligibility

(a) The Child Care Program shall re-determine income and program eligibility for continued child care payments;

- (1) When information is obtained that there are anticipated changes in the individual's or family's situation;
- (2) Promptly, not to exceed 30 days, after information is received that changes have occurred in the individual's or family's circumstances which may result in ineligibility;
- (3) Not less frequently than every 12 months from the month eligibility was determined.

(b) Redetermination of eligibility shall be made in the same manner as the disposition of an application including signing and dating a form prescribed by the Child Care Program.

(c) Child care shall be terminated for recipients when they do not complete the process of re-determination of eligibility which include attending a mandatory orientation.

Part 500 - Adverse Actions

§ 55-60-501 Denial, Suspension or Termination of Child Care

Child care payments shall be denied, suspended, or terminated when:

- (a) The parent does not submit the signed payment invoice; or
- (b) The payment invoice prescribed by the Child Care Program is not signed and dated; or
- (c) The child no longer meets the eligibility requirements; or
- (d) The parent no longer meets the eligibility requirements; or
- (e) The provider no longer meets the licensing requirements, or
- (f) Conditions initially present in the family situation have changed and child care is no longer needed or any listing/registration requirements for exempt care;
- (g) When the child care provider is no longer meeting licensing and/or subsidy requirements as applicable;
- (h) The parent(s) voluntarily requests in writing discontinuance of child care services; or
- (i) The parent(s) and the child are unable to use child care; or
- (j) The parent (s) cannot be located; or
- (k) The family fails to provide the required verification for redetermination or to support the reported changes; or
- (l) When recipients do not complete the process of redetermination or eligibility; or
- (m) When the Child Care Program determines that there are insufficient funds to maintain all children receiving care. Priorities for eligibility will be determined pursuant to section 55-60-105 of these regulations.
- (n) When the parent does not pay their contribution to the cost of child care at the minimum percentage fee (co-payment).

§ 55-60-505 Notice of Adverse Action

- (a) Prior to any action to reduce, deny, suspend, or terminate any childcare service specified in these regulations, the Child Care Program shall provide the parent with timely and adequate notice before the adverse action is taken.
- (b) The notice of adverse action shall be considered timely when the Child Care Program provides the notice at least 10 calendar days prior to the effective date of action.
- (c) In order to be adequate, the notice shall contain the following information:
  - (1) The proposed action and the reason for the proposed action; and
  - (2) A citation to the Child Care Program rules supporting the proposed action;
  - (3) The name and telephone number of the person to contact for additional information;
  - (4) The family's right to appeal the Child Care Program's decision to the Secretary, Department of Community and Cultural Affairs.

§ 55-60-510 Administrative Appeal Requests

- (a) A parent may file a written request for an administrative appeal when the family is dissatisfied with the Child Care Program's adverse action of denying, reducing, terminating, and suspending assistance. The family shall have an opportunity to:
  - (1) Examine the case record as well as all documents and records to be used at the appeal hearing at a reasonable time before the date of the hearing as well as during the hearing;
  - (2) Present the case independently or with the aid of legal counsel;
  - (3) Bring witnesses, including an interpreter if non-English speaking;
  - (4) Establish all pertinent facts and circumstances;
  - (5) Advance any arguments appropriate to the issue being heard without undue interference; and
  - (6) Question or refute any testimony or evidence, and to confront and cross-examine any witness.
- (b) The appeal request shall be in writing delivered to the Department of Community and Cultural Affairs Office of the Secretary within 10 calendar days of the date on which the notice informing the family of a child care program's decision was delivered to the family and shall refer to the following:
  - (1) The request is for an administrative appeal;
  - (2) The specific action identified in the notice that is being appealed; and
  - (3) Whether continuation of benefits at the current level are being requested with the understanding that the family will be required to pay back the total value of benefits (received pending the decision) if the DCCA decision is upheld.
- (c) If the request is not filed within 10 calendar days of the date the notice was provided to the family, the request shall be denied and the Office of the Secretary shall provide notice of denial to the family.
- (d) A hearing officer appointed by the Secretary shall preside over a hearing within 30 days of timely appeal request.
  - (1) The hearing shall be informal where strict rules such as the exclusion of hearsay evidence do not apply. However, the evidence presented must be relevant.
  - (2) The family and the Child Care Program shall have an opportunity to present evidence, including witness testimony and documents. Each party shall also have the right of cross-examination.
  - (3) The hearing shall be audio-recorded.
  - (4) The hearing officer shall issue a written decision to the Child Care Program and the family within 30 days after the hearing.

§ 55-60-515 Overpayment and Recoupment

(a) Failure to provide the Child Care Program notice of a change in circumstances could result in an overpayment. An overpayment may occur when a Child Care Provider receives payments to which the provider is not entitled, including but not limited to:

- (1) Administrative errors, such as a parent is not charged the appropriate payment amount;
- (2) Parent errors, such as unintentional errors in payment invoices or fraud; and
- (3) Provider errors, such as failure to immediately inform of a child's absences; or fraud.

(b) An overpayment made to a provider shall be recovered through:

- (1) A reduction of the amount payable to the provider in subsequent months until the entire amount of overpayment is recovered. The parent is responsible for the difference and must pay the difference to the provider;
- (2) Repayment in full or in part, by the provider to the Child Care Program.

(c) Parents subject to recovery of overpayment shall be provided written notice by the Child Care Program stating:

- (1) Reasons, dates, and the amount of the overpayment;
- (2) The proposed method by which the overpayment shall be recovered; and
- (3) The parent's right to request an administrative appeal if the individual disagrees with the Child Care Program's proposed action.

(d) When there is both an overpayment and an underpayment to the parent, the overpayment and underpayment shall be offset one against the other in correcting the payment.

(e) Overpayment to parents may be recovered from the family that was overpaid, from individuals who were members of the family when overpaid, or from families which include members of a previously overpaid family.

(f) When recouping child care overpayments, overpayment may be recovered only from child care benefits, provided the parent continues to receive such benefits.

(g) Recovery of child care overpayments to parents who formerly received child care benefits shall be referred to the Child Care Program's investigation office for collection action.

(h) If a parent for whom a collection action has been initiated fails to make a payment for any month in the calendar tax year, the Child Care Program may refer debts exceeding twenty-five dollars to the comptroller of the State for tax set off.

(i) If the DCCA Child Care Program underpays a provider, the DCCA Child Care Program will reimburse the provider by paying back the underpaid amount.

§ 55-60-520 Termination for Insufficient Funds

(a) The Child Care Program may suspend or terminate benefits, reduce benefits, or refuse to take new applications for certain or all classes of beneficiaries as set forth in Section 1006, the Child Care Program determines, at its discretion, that insufficient funds will be available to pay for child care services at current amounts through the end of the fiscal year.

(b) The budget will be managed by reviewing monthly expenditures, and evaluating whether the cumulative expenditures at the end of any given month is less than or equal to the number of months that have expired in the fiscal year times 1/12 of the budget appropriation for child care payments.

(c) When the Child Care Program determines that the budget appropriation has or soon will be exceeded, notices of adverse action may be issued to limit the number of children receiving subsidies in any given month. This determination is entirely within the Child Care Program's discretion.

(d) Case termination, suspension or reduction of benefits, or refusal to take application will be prioritized as set forth in section 60-10-105.

Part 600 - Adverse Actions against Providers

§ 55-60-601 Denial, Suspension, Revocation of CCDF Provider's Certificate, and Hearings

- (a) The conditions for denial, suspension, or revocation of a child care provider's eligibility to participate in the Child Care Development Fund (CCDF) program and the action to be taken by the CCDF are as follows:
- (1) CCDF may deny, suspend, or revoke the provider's eligibility to participate in the program if the provider does not comply with the rules of the CCDF for the providers and their facilities;
  - (2) CCDF may revoke the provider's CCDF certificate if the provider has a violation and has been suspended at least once previously;
  - (3) An application by a provider for renewal of a CCDF certificate must be made at least 30 calendar days prior to its expiration and not earlier than 120 days before its expiration.
  - (4) A provider whose CCDF certificate is about to be denied, suspended, or revoked shall be given written notice by certified or registered mail addressed to the location shown on the CCDF application or CCDF certificate.
  - (5) The notice shall contain a statement of the reasons for the proposed action and shall inform the provider of the right to appeal the decision to the Office of the Secretary of the Department of Community and Cultural Affairs, no later than 20 days after receipt of the notice of proposed action.
  - (6) The provider has twenty days from receipt of the notice of proposed action to make a written request for a hearing. Upon receipt of appeal the Secretary of DCCA shall give written notice to the provider of a time and place for a hearing before a hearing officer. On the basis of the evidence adduced at the hearing, the hearing officer shall make the final decision as to whether the provider's certificate shall be denied, suspended, or revoked; and
  - (7) If no timely written request for a hearing is made, processing of the application shall end or the certificate shall be suspended or revoked as of the termination of the twenty day period.
  - (8) The CCDF program will notify the parents or legal guardians of each child who is provided care in the provider's home or facility of the suspension or revocation.
  - (9) At any hearing provided for by this section, the provider may be represented by counsel and has the right to call, examine, and cross examine witnesses. Evidence may be received even though inadmissible under rules of evidence applicable under court procedures. Hearing officer decisions shall be in writing, shall contain findings of fact and conclusions of law, and shall be mailed to the parties by certified or registered mail to the last known address as is shown on the application or CCDF certificate. The Administrative Procedure Act (1 CMC §§ 9101 et seq.) shall also be applicable at any hearing.



Commonwealth of the Northern Mariana Islands

OFFICE OF THE GOVERNOR

Bureau of Environmental and Coastal Quality

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Ralph DLG. Torres  
Governor

Victor B. Hocog  
Lt. Governor

Frank M. Rabauliman  
Administrator

Ray S. Masga  
Director, DEQ

Janice E. Castro  
Acting Director, DCRM

**NOTICE OF CERTIFICATION AND ADOPTION OF RULE**

**ADOPTION OF RULE:** ADOPTION OF the interim policy to waive and not enforce mandatory permit extension fees for DCRM permits.

**ACTION TO ADOPT RULE:** Pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC §§ 9102, 9105, and applicable regulations, the Office of the Governor, Bureau of Environmental and Coastal Quality, Division of Coastal Resources Management, HEREBY ADOPTS AS A RULE interim policy to waive and not enforce Section 15-10-602(b)(2) of the Coastal Rules and Regulations, which states that a permittee shall pay a fee equaling 50% of the original permit for an extension in which to complete the project, regardless of whether there has been a change in the cost or scope of the project.

**AUTHORITY:** The attached rule is being promulgated by the Director of the Division of Coastal Resources Management (DCRM), Bureau of Environmental and Coastal Quality (BECQ), Office of the Governor, Commonwealth of the Northern Mariana Islands. These rules, regulations, technical provisions, and specifications shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of DCRM.

**PURPOSE AND OBJECTIVE OF RULE:** NMIAC Section 15-10-610(b)(2) states that a permittee shall pay a fee equaling 50% of the original permit for an extension in which to complete the project, regardless of whether there has been a change in the cost or scope of the project. BECQ-DCRM finds that additional permitting fees should be limited to instances in which the cost of the project has been increased. Additional costs for the project will result in fees in accordance with 15-10-205(f)(5). Accordingly, BECQ will no longer charge additional fees for “no cost” amendments or extensions of existing permits.


**DIRECTIONS FOR FILING AND PUBLICATION:** This Rule shall be published in the Commonwealth Register in the section on newly adopted Rules (1 CMC § 9102(a)(2)).

The Director will take appropriate measures to make this Rule known to the persons who may be affected by them.

EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b) and applicable regulations, this adopted Rule is effective 10 days after compliance with 1 CMC §§ 9102, 9105 and publication in the Commonwealth Register.

I, Frank M. Rabauliman, Administrator, Bureau of Environmental and Coastal Quality, hereby approve the attached Rule.

Submitted by:  \_\_\_\_\_ Date 8/28/17  
Frank M. Rabauliman  
Administrator, Bureau of Environmental  
and Coastal Quality

Filed and  
Recorded by:  \_\_\_\_\_ Date 09.13.2017  
Esther SN. Nesbitt  
Commonwealth Register

Received by:  \_\_\_\_\_ Date 9/13/17  
Shirley Camacho-Ogumoro  
Special Assistant for Administration

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9102(c), the rule attached hereto has been reviewed and approved as to form and legal sufficiency by the Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

 \_\_\_\_\_ Date 9/20/17  
Edward Manibusan  
Attorney General



Frank M. Rabauliman  
Administrator

Commonwealth of the Northern Mariana Islands  
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Janice E. Castro  
Acting Director, DCRM

**BECQ-DCRM Interpretive Rule Regarding  
Permitting Fees for No-Cost Permits Amendments**

**Purpose:**

This interpretive rule is designed to clarify when additional permitting fees are required and to ensure that no additional fees are assessed when the project is either unchanged or reduced in size. This guideline clarifies NMIAC § 15-10-610(b)(2) of the Coastal Rules and Regulations.

**Interpretation:**

Section 15-10-610(b)(2) of the Coastal Rules and Regulations states that a permittee shall pay a fee equaling 50% of the original permit for an extension in which to complete the project, regardless of whether there has been a change in the cost or scope of the project. BECQ-DCRM finds that additional permitting fees should be limited to instances in which the cost of the project has been increased. Additional costs for the project will result in fees in accordance with 15-10-205(f)(5). Accordingly, BECQ will no longer charge additional fees for 'no-cost' amendments or extensions of existing permits.

---

Janice E. Castro  
DCRM Acting Director

8/24/17

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Date



Commonwealth of the Northern Mariana Islands

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Ralph DLG. Torres  
Governor

Victor B. Hocog  
Lt. Governor

Frank M. Rabauliman  
Administrator

Ray S. Masga  
Director, DEQ

Janice E. Castro  
Acting Director, DCRM

## NOTICE OF CERTIFICATION AND ADOPTION OF RULE

ADOPTION OF RULE: ADOPTION OF Wetland / Waters Delineation Report Contents

**ACTION TO ADOPT RULE:** Pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC §§ 9102, 9105, and applicable regulations, the Office of the Governor, Bureau of Environmental and Coastal Quality, Division of Coastal Resources Management, HEREBY ADOPTS AS A RULE Wetland / Waters Delineation Report Contents.

**AUTHORITY:** The attached rule is being promulgated by the Director of the Division of Coastal Resources Management (DCRM), Bureau of Environmental and Coastal Quality (BECQ), Office of the Governor, Commonwealth of the Northern Mariana Islands. These rules, regulations, technical provisions, and specifications shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of DCRM.

**PURPOSE AND OBJECTIVE OF RULE:** Section 15-10-330 of the Coastal Rules and Regulations defines wetlands as “areas of particular concern” (APC) and specifies management standards for important coastal resources. In order to ensure uniform delineation of wetland boundaries, and promote conservation and wise development of coastal resources, BECQ-DCRM adopts standards for determination of wetland boundaries using the U.S. Army Corps of Engineers’ 1987 Delineation Manual and applicable regional supplement with the exception of application of jurisdictional nexus analysis, as detailed in “Wetland / Waters Delineation Report Content: Guidance for CNMI from the BECQ’s Division of Coastal Resources Management.”


**DIRECTIONS FOR FILING AND PUBLICATION:** This Rule shall be published in the Commonwealth Register in the section on newly adopted Rules (1 CMC § 9102(a)(2)).


The Director will take appropriate measures to make this Rule known to the persons who may be affected by them.



EFFECTIVE DATE: Pursuant to the APA, 1 CMC § 9105(b) and applicable regulations, this adopted Rule is effective 10 days after compliance with 1 CMC §§ 9102, 9105 and publication in the Commonwealth Register.


I, Frank M. Rabauliman, Administrator, Bureau of Environmental and Coastal Quality, hereby approve the attached Rule.

Submitted by:  8/28/17  
Frank M. Rabauliman  
Administrator, Bureau of Environmental  
and Coastal Quality  
Date

Filed and  
Recorded by:  09.13.2017  
Esther SN. Nesbitt  
Commonwealth Register  
Date

Received by:  9/13/17  
Shirley Camacho-Ogumoro  
Special Assistant for Administration  
Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9102(c), the rule attached hereto has been reviewed and approved as to form and legal sufficiency by the Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

 9/20/17  
Edward Manibusan  
Attorney General  
Date



Commonwealth of the Northern Mariana Islands  
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Frank M. Rabauliman  
Administrator

Janice E. Castro  
Acting Director, DCRM

*Guidance for CNMI from the BECQ's Division of Coastal Resources Management*  
Wetland / Waters Delineation Report Contents

This guidance defines how wetlands and waters shall be delineated under the Bureau of Environmental and Coastal Quality Division of Coastal Resources Management's (DCRM) regulations. Delineations shall utilize the Army Corps of Engineers' (USACE) requirements for wetland and other waters delineation reports using the 1987 ACE Delineation Manual, 2012 Regional Supplement for the Hawaii and Pacific Islands Region (Regional Supplement), and policy guidance for establishing the limit of other waters (33 CFR Part 328). Because no "federal nexus" is required for regulation of wetlands in CNMI, wetlands that may not fall under USACE jurisdiction may still be regulated at the local level.

For the purposes of wetland/waters delineation report review and verification by DCRM, a complete delineation report shall, at minimum, include the following components:

- **Clear identification of the site location and assessment area.** This is typically the property line for most projects, although linear projects such as roadways or utility lines are usually evaluated within a designated right-of-way or corridor width. Regardless of project type, the report must clearly identify the boundary of the area investigated on maps that are part of the report and provide a contextual map indicating site location.
- **Description of field conditions at the time of review.** When a field review is conducted, the report must include the date(s) of review, recent climatic conditions, and any other factors potentially influencing the interpretation of wetland/waters-related field characteristics.
- **Identification of who conducted the review and for whom the review was conducted.** The name(s) and phone number and/or email address of the primary author is required. Inclusion of names of all involved field surveyors is encouraged.
- **Purpose of the review.** This is important in determining the general approach and methods used for identifying and delineation wetlands and other aquatic resources on the site. Delineations are almost always conducted for the purpose of some type of regulatory compliance.
- **Methods.** The report should identify the specific methods, techniques, and data sources used to complete the delineation. The current version of the Manual and Regional Supplement describe a variety of different approaches and data sources that can be used depending on the site conditions and other circumstances. The report should discuss which methods and data sources were used and why. Where wetlands/waters have or are suspected to have a federal nexus, delineation determinations should be submitted to the Army Corps of Engineers' Guam Regional office and the DCRM office. Where wetlands are not believed to have a federal nexus, reports can be submitted directly to the DCRM permitting office. The DCRM may forward these reports to the USACE at its discretion.

For determinations of the boundaries of wetlands/waters (jurisdictional or non-jurisdictional), DCRM requires a report that at minimum: (1) outlines site hydrology and current conditions; and (2) maps proposed boundaries including justification regarding the basis used for this determination. DCRM staff will verify boundaries based on assessment of hydrology, vegetation, and soils. Demarcation of proposed boundary lines and soil test pits using flagging and GPS referencing of the proposed delineation line is required. Attachment of geo-referenced photos to further support observations from the data sheets and conclusions of the report is encouraged.

For official confirmation of a delineation of waters of the U.S., including wetlands, by the Honolulu District, U.S. Army Corps of Engineers Regulatory Office, all delineations must be prepared in accordance with the current method required by the Corps (per the 1987 Corps of Engineers Wetland Delineation Manual and the current Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Hawaii and Pacific Islands Region) and use of the most current National Wetland Plant List (NWPL).

- 1987 USACE Wetland Delineation manual: <https://el.erdc.dren.mil/elpubs/pdf/wlman87.pdf>
- 2012 Regional Supplement: [http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg\\_supp/HPI\\_regSUPP\\_v2.pdf](http://www.usace.army.mil/Portals/2/docs/civilworks/regulatory/reg_supp/HPI_regSUPP_v2.pdf)
- National Wetland Plant List: [http://rsgisias.crrel.usace.army.mil/nwpl\\_static/index.html](http://rsgisias.crrel.usace.army.mil/nwpl_static/index.html)

The 2015 CNMI Rapid Assessment Methodology (RAM) may be used to assess the value / quality of delineated wetlands for local permitting and resource management purposes.

• **Mapping Resources.** The report should include readily available mapping products that provide clear and useful information related to wetlands and aquatic resources. The boundaries of the review area, north arrow, scale and legend must be identified on each map, which must also be at a scale allowing for identification of relevant information. At a minimum, the following figures must be included in the report (may be combined, as appropriate):

- Site location, with adequate detail to provide a reviewer directions to the site.
- Topography data from sources such as USGS quads, a topographic survey, and / or LiDAR data.
- NRCS Web Soil Survey (WSS) map.
- National Wetland Inventory (NWI), National Hydrographic Dataset (NHD), and/or any other available local inventory mapping, including storm sewer mapping.
- Recent aerial photography and historical imagery, if those data facilitate improved understanding of site conditions to support a complete delineation report.
- A final Delineation Figure, **overlaid on current aerial imagery or 1:200 or larger scale topographic map**, depicting the wetland size, and labeling the identified wetland or aquatic resources and sampling points referenced to corresponding data forms. All wetlands and aquatic resources should be shown on the final delineation figure regardless of their presumed jurisdictional status in relation to any regulatory program.

• **Data Forms for Wetlands.** For delineations involving onsite field assessment, supporting data forms from the current Regional Supplement are required. The data forms provide the supporting field documentation for report conclusions. These forms must be fully completed and correspond to sample point locations identified on one or more mapping resources in the report. Photographs of the sampling locations and overall site conditions can often provide further documentation of

observed conditions. Locations of photographs must be referenced using GPS coordinates and/or on a project boundary map showing the location of the camera and the direction the camera was oriented at the time of the photo. Soil pits and proposed delineation line must be flagged and numbered for agency verification purposes. Assessor(s) must provide a sufficient number of data points to adequately sample and represent the complexity of a site and the wetland edge(s).

- **Data Collection for Other Waters.** Unless specifically requested by DCRM or other regulatory agencies, data forms are not required for delineated nonwetland waters unless riverine wetlands are located waterward of the Ordinary High Water Mark(OHWM)/High Tide Line. Flagging in the field should be directly vertical of the OHWM in non-tidal areas and the High Tide Line in Tidal areas.

- **Results and Discussion.** Basic conclusions should be discussed and described in the report. This includes a physical description of the site in terms of vegetation, soils and hydrology. The report should describe wetlands, other aquatic resources and non-wetland/water areas in terms of their vegetation (plant community type), landscape position, hydrology, and soils with sufficient detail to describe site conditions. The report should also discuss the consistency of the delineation with the existing mapping resources. For example, if the field delineation fails to identify wetlands in mapped hydric soil areas, the report should discuss this inconsistency and possible reasons for it. The boundary of all areas having at least one positive indicator for each of the three wetland parameters and/or having an OHWM or High Tide Line should be shown on the final delineation figure.

- **Conclusions.** The delineator’s opinion related to potential agency jurisdictional responsibilities and any other pertinent facts should be provided. If there are multiple, separate resources on the study site, a table identifying each with the delineator’s opinion as to potential jurisdiction may be useful to support expeditious regulatory review.

Because no “federal nexus” is required for regulation of wetlands in CNMI, wetlands that may not fall under USACE jurisdiction depicted in the image at right may still be regulated at the local level.

Early coordination with the BECQ-DCRM office is encouraged to ensure submission of complete and timely review of wetland/waters reports. For more information, please visit [crm.gov.mp/](http://crm.gov.mp/) or contact our office at (670) 664-8300.

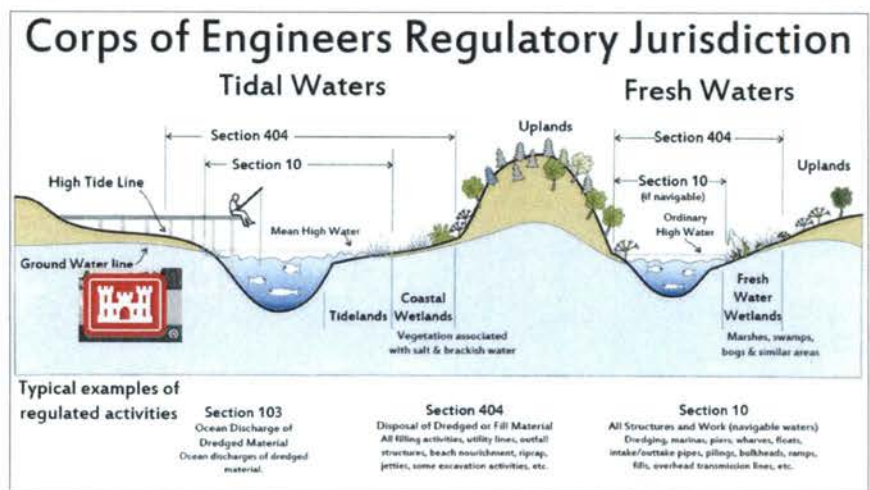


Figure courtesy of U.S. Army Corps of Engineers, <http://www.nwp.usace.army.mil/Missions/Regulatory/Jurisdiction.aspx>

## Glossary of Selected Terms

**High tide line** – The term *high tide line* means the line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm. See 33 CFR 328.3(c)(7), NMIAC § 15-10-020.

**Ordinary high water mark** – The term *ordinary high water mark* means that line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of soil, destruction of terrestrial vegetation, the presence of litter and debris, or other appropriate means that consider the characteristics of the surrounding areas. See 33 CFR 328.3(c)(6).

**Waters of the United States** – See 33 CFR 328.3(a)

**Wetlands** – The term *wetlands* means those areas that are inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands include swamps, marshes, mangroves, lakes, natural ponds, surface springs, streams, estuaries, and similar areas in the Northern Mariana Islands chain. See 33 CFR 328.3(c)(4) and NMIAC § 15-10-020.



Commonwealth of the Northern Mariana Islands

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Frank M. Rabauliman  
Administrator

Ray S. Masga  
Director, DEQ

Janice E. Castro  
Acting Director, DCRM

## NOTICE OF CERTIFICATION AND ADOPTION OF RULE

### ADOPTION OF RULE: ADOPTION OF Wetland Buffers in CNMI

**ACTION TO ADOPT RULE:** Pursuant to the procedures of the Administrative Procedure Act (APA), 1 CMC §§ 9102, 9105, and applicable regulations, the Office of the Governor, Bureau of Environmental and Coastal Quality, Division of Coastal Resources Management, HEREBY ADOPTS AS A RULE Wetland Buffers in CNMI.

**AUTHORITY:** The attached rule is being promulgated by the Director of the Division of Coastal Resources Management (DCRM), Bureau of Environmental and Coastal Quality (BECQ), Office of the Governor, Commonwealth of the Northern Mariana Islands. These rules, regulations, technical provisions, and specifications shall have the force and effect of law and shall be binding on all persons and other legal entities subject to the jurisdiction of DCRM.

**PURPOSE AND OBJECTIVE OF RULE:** Section 15-10-330 of the Coastal Rules and Regulations defines wetlands as “areas of particular concern” (APC) and specifies management standards for important coastal resources. Projects proposed within the wetlands and mangroves APC are evaluated to ensure no significant adverse impacts to natural drainage patterns, destruction of important habitat, or discharge of toxic substances (NMIAC 15-10-330(b)(1)). Critical wetland habitat is to be maintained and, where possible, enhanced (NMIAC 15-10-330(b)(3)). Furthermore, the CNMI has articulated a “no net loss” policy for wetlands since the publication of the 1991 Saipan Comprehensive Wetlands Management Plan. Despite these management standards, water quality reports continue to show impairment and degradation of this important coastal resource. These observed trends prompted a literature review of best management practices for wetlands, focusing on recommended buffer areas to support wetland health and functions.

In order to promote conservation and wise development of coastal resources as well as maintain and where possible enhance wetland and mangroves, BECQ-DCRM adopts the policy guidance outlined in “Establishing Wetland Buffers in CNMI to Protect ‘Environmentally Sensitive Areas’ and Ensure ‘No Net Loss,’” referred to in short title as “Wetland Buffers in CNMI.”

**DIRECTIONS FOR FILING AND PUBLICATION:** This Rule shall be published in the Commonwealth Register in the section on newly adopted Rules (1 CMC § 9102(a)(2)).


The Director will take appropriate measures to make this Rule known to the persons who may be affected by them.

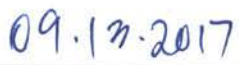
**EFFECTIVE DATE:** Pursuant to the APA, 1 CMC § 9105(b) and applicable regulations, this adopted Rule is effective 10 days after compliance with 1 CMC §§ 9102, 9105 and publication in the Commonwealth Register.


I, Frank M. Rabauliman, Administrator, Bureau of Environmental and Coastal Quality, hereby approve the attached Rule.

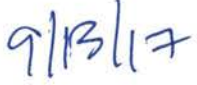
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Frank M. Rabauliman  
Administrator, Bureau of Environmental  
and Coastal Quality

  
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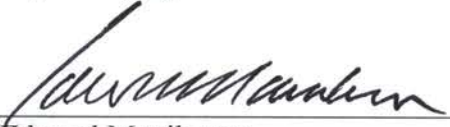
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Commonwealth Register

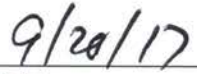
  
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Received by:   
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Shirley Camacho-Ogumoro  
Special Assistant for Administration

  
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Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9102(c), the rule attached hereto has been reviewed and approved as to form and legal sufficiency by the Attorney General and shall be published, 1 CMC § 2153(f) (publication of rules and regulations).

  
\_\_\_\_\_  
Edward Manibusan  
Attorney General

  
\_\_\_\_\_  
Date



# Commonwealth of the Northern Mariana Islands

## OFFICE OF THE GOVERNOR

### Bureau of Environmental and Coastal Quality

Division of Coastal Resources Management

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Frank M. Rabauliman  
Administrator

Janice E. Castro  
Acting Director, DCRM

## Guidance for Establishing Wetland Buffers in CNMI to Protect “Environmentally Sensitive Areas” and Ensure “No Net Loss”

Scientific studies assessing the role of buffers surrounding wetlands and streams uniformly confirm that buffers are essential for the protection of these ecosystems. Based on best available science, buffers in the CNMI will be 50 feet minimum for all wetlands and 100 feet minimum for high value wetlands. These buffer sizes are consistent with recommendations of the 1991 Saipan Comprehensive Wetlands Management Plan and the 2015 Rapid Assessment Methodology.

Wetlands, streams, and riparian areas provide a host of ecosystem services including improved water quality, flood mitigation, habitat for threatened and endangered species, as well as chemical functions including nitrogen fixation and carbon sequestration. In the Commonwealth of the Northern Mariana Islands (CNMI), wetlands are defined as ecosystems with one or more of the following indicators: hydric soils, hydrophytic vegetation, or visible wetland hydrology. Broadly speaking, “buffers” are defined as “linear bands of permanent vegetation, preferably consisting of native and locally adapted species, located between aquatic resources and adjacent areas subject to human alteration (ELI 2003, *citing* Castelle et al. 1994, Fischer and Fischenich 2000).

Literature reviewed in this assessment included a range of wetland systems, including unique systems ranging from humid, semi-arid, and tropical where data was available. Part I of this report summarizes current literature assessing buffer functions and ecosystem services of wetland systems. Next, Part II highlights the scientific data on wetland and stream buffers in terms of function protection. Part III concludes with buffer recommendations and proposed next steps for wetland management to achieve a “no net loss” policy in CNMI.

### **I. Summary of Wetland Ecosystem Services and Buffer Functions**

Wetlands provide numerous valuable functions including water quality improvement, flood moderation, groundwater recharge, wildlife habitat, soil creation, nitrogen fixation, carbon sequestration, as well as research opportunities, recreation, and aesthetic enjoyment (*see e.g.* Crance, 1988; Mitsch & Gosselink, 1993; ELI, 2003). Wetland buffers are transitional vegetated areas adjacent to wetland ecosystems that help protect wetlands from the adverse effects of development and other indirect activities within the watershed.

Buffers function to:



- *Maintain and improve water quality by trapping and absorbing sediments, nutrients, and pollutants before they reach the wetland;*
- *Expand the catchment area of fresh surface waters for groundwater renewal and recharge;*
- *Moderate hydrology by reducing rapid water level fluctuations in wetlands, which can in turn provide flood control in storm events;*
- *Decrease sound and light disturbance from activities in adjacent areas;*
- *Provide food, cover, travel corridors, and breeding areas for wildlife; and*
- *Support bio-chemical processes in wetlands including nitrogen fixation and carbon sequestration in soils.*

Because of increasing recognition of the myriad of values wetland systems provide, conservation efforts nationally have been focusing on improving wetland protection. Although the Clean Water Act of 1972 did establish federal protections for jurisdictional wetlands, numerous studies have concluded that wetland protection without buffer protection is inadequate to maintain and enhance the integrity of these systems, as detailed in Part II. Implications of these data and policy trends support recommendations for buffers in the CNMI proposed in Part III of this report.

## **II. Efficacy of Buffers to Protect Wetland Ecosystem Services**

Studies assessing the efficacy of wetland buffers can be categorized as functioning to (i) protect and enhance water quality, (ii) mitigate negative impacts of hydrology, and (iii) provide fish and wildlife habitat. While few studies have assessed or quantified potential correlations between buffer size and carbon sequestration, valuation of wetland services is discussed briefly here in subsection (iv) in terms of quantification of benefits of healthy wetland systems, which subsections (i) – (iii) demonstrate is reliant on the establishment of minimum wetland buffers.

### **(i) Enhancing Water Quality**

Often located in low-lying areas, wetland ecosystems are particularly at risk of sedimentation from upland sources and erosional scour due to increased water velocities from mismanaged upland surface waters (Brown & Schaefer, 1987). Vegetated wetland buffers can function to reduce the stressors and impacts to water quality by removing pollutants from sediment-laden runoff (Shisler et al., 1987) and allowing more time for removal of water-borne sediments and associated pollutants (WA ECY, 1992, *citing* Broderson, 1973). While numerous factors, including slope length and gradient, surface roughness, and soil hydrologic properties may influence the effectiveness of vegetative buffers, strong correlations have been observed between buffer width and pollutant removal (Phillips, 1989). Soils, plants, and bacteria in wetland buffers remove or transform soluble nutrients such as nitrogen and phosphorus as well as pollutants including heavy metals and fecal coliform yielding measurable water quality benefits (EPA, 1988; Murdoch & Capobianco, 1979; Shisler et al., 1987; Gallagher & Kibby, 1980). Water quality benefits vary not just with the size of the buffer, but also with the flow pattern, vegetation type, percent slope, soil type, surrounding land use, pollutant type and dose, and precipitation patterns (see ELI, 2008, *citing* Adamus, 2007; Wenger, 1999; Sheldon et al., 2005). Numerous studies indicate various resource management benefits of buffer size functions in relationship to

water quality parameters, as detailed here in terms of (a) sediment removal, (b) nutrient removal, (c) fecal coliform removal, and (d) temperature moderation.

*(a) Sediment Removal*

In addition to supporting water quality functions, root systems of vegetated wetland buffers can control the severity of soil erosion during storm events (Shisler et al., 1987). As the Washington Department of Ecology report summarizes, “Gilliam and Skaggs (1988) found that 50% of the sediment from agricultural fields was deposited in the first 288 feet adjacent to the exit location of the fields,” while “Horner and Mar (1982) found that a 200-foot grassy swale removed 80% of the suspended solids and total recoverable lead” (WA ECY, 1992). Direct, non-linear relationships between buffer width and percent sediment removal have been established, where buffer width requirements must increase to achieve greater sediment removal. In their studies, Wong and McCuen (1982) found that effective buffer widths approximately doubled from 100 feet to 200 feet at 2% slope when the design criteria increased from 90% to 95% sediment removal (WA ECY, 1992).

Numerous studies also assessed the effectiveness of buffers in protecting water quality adjacent to roads (Efta & Chung, 2014; Furniss et al., 1999; Bilby et al., 1989) or logging operations (WA ECY, 1992, *citing* Broderson, 1973, Darling et al., 1982, Lynch et al., 1985, and Corbett & Lynch, 1985). In a study of three watersheds in western Washington, Broderson (1973) noted the importance of vegetated buffers in resisting channelization and protecting water quality. These assessments indicated that buffers have little or no effect on sediment removal if water crosses the land as channelized flow, however, if maintained as overland sheet flow, 50-foot buffers were sufficient for controlling most sedimentation on less than 50% slopes (Id.). Steeper slopes required wider buffers. Broderson concluded that a maximum buffer width of 200 feet would be effective to control sedimentation on steep slopes, and further, recommended that buffer widths be measured from “visual signs of high water” (Id.).

In addition to buffer size, vegetation has also been found to play a significant role in sediment removal and water quality protection. Assessing an Oregon State University formula for protecting streams and wetlands from disturbance and sediment incursions, one report found that “best functioning” buffers demonstrated greater stability over time, and that buffer stability was enhanced by high percentages of vegetative cover (WA ECY, 1992, *citing* Darling et al., 1982). Literature reviews and field evaluations highlight agreement that while sediment trapping capacities of buffers are site-specific, the width of a buffer is a critical driver in effective sediment trapping (Yuan, 2009).

*(b) Nutrient Removal*

Numerous studies have assessed the efficacy of buffers in controlling nutrient inputs into wetlands and streams. Monitoring feedlots exposed to natural levels of rainfall, Vanderholm and Dickey (1978) found that buffer widths ranging from 300 feet at 0.5% slope to 860 feet at 4.0% slope were effective in removing 80% of nutrients, solids, and oxygen-demanding substances from surface runoff through sediment removal and nutrient uptake (WA ECY, 1992, pg. 8). When studying logging operations, Lynch et al. (1985) found that a 98-foot buffer reduced nutrient levels to “far below drinking water standards” (Id.). In Maryland’s wooded riparian buffers, 80% of phosphorous and 89% of nitrogen were found to be removed from agricultural

runoff, with the majority of the removal occurring within the first 62.3 feet (WA ECY, 1992, *citing* Shisler et al., 1987). However, in North Carolina, 75-foot buffers for estuarine shorelines required by state regulations were found to be inadequate for filtering polluted non-point source runoff from typical residential developments (WA ECY, 1992, *citing* Phillips, 1989).

Rather than assessing nutrient removal in terms of buffer sizes by feet, some studies have considered buffer ratios. For example, when studying runoff from caged poultry manure, Bingham et al. (1980) reported that a 1:1 buffer area to waste area ration was successful in reducing nutrient runoff to background levels for animal waste applications (WA ECY, 1992, pg. 9). Similarly, WA ECY reports, Overcash et al. (1981) analyzed grass buffer strips as vegetative filters for non-point source pollution from animal waste and concluded that a 1:1 ratio of buffer area to waste area was sufficient to reduce animal waste concentrations by 90% to 100% (WA ECY, 1992). While other studies indicate that the efficacy of vegetative filter strips may decrease over time as sediments accumulate, these buffers nonetheless provide valuable water quality benefits including reducing localized erosion (Dillaha et al., 1986).

Fennessy and Cronk assessed the effectiveness and restoration potential of riparian buffers to manage nonpoint source pollution using data from major rivers in the U.S. and the U.K. found that vegetative buffer zones of 20 to 30 meters in width can remove up to 100% of incoming nitrate given “favorable conditions” (Fennessy, 1997). In an extensive review of scientific literature, the Environmental Law Institute concluded that data suggests “[d]epending on site conditions, much of the sediment and nutrient removal may occur within the first 15-30 feet of the buffer, but buffers of 30-100 feet or more will remove pollutants more consistently” (ELI, 2008). Given the correlation with land use intensity and water quality degradation, that report concluded that “buffer distances should be greater in areas of steep slope and high intensity land use” (Id.).

### *(c) Fecal Coliform Removal*

Fecal coliform is used as an indicator of pathogenic microorganisms. Thus, removal of fecal coliform is considered beneficial to people and the environment. In 1981, Grismer developed a fecal coliform reduction model for dairy waste management which was applied to the Tillamook basin in northwestern Oregon. The model, which considered the effects of precipitation, season, waste storage and application, die-off of bacteria, soil characteristics, and other factors, suggested that a 98-foot “clean grass” strip would reduce concentrations of fecal coliform by 60% (WA ECY, 1992). Buffer strips were found to reduce concentrations of nutrients and microorganisms to “acceptable levels” in feedlot runoff during summer storms, with 70% coliform removal measured from a 100-foot grass filter strip (Id., *citing* Young et al., 1980). As Wenger summarizes, several studies highlight positive removal trends. Specifically, a 1973 study by Young et al. found that a 60 m (197 ft) long grass filter strip reduced fecal coliform by 87%, total coliform by 84% and BOD by 62% (Wenger, 1999, *citing* Karr and Schlosser 1977). In a study of nonpoint pollution control in Kentucky, 9 m (27-foot) grass filter strips removed 74% and 43% of fecal coliform in two plots (Coyne et al., 1995). Some reviews note that ranges in results for removal of fecal coliform associated with agricultural runoff in relation to buffer size are likely due to variable flow lengths and influent concentrations (Schueler, 1999). However, positive relationships between buffer size and removal rates are routinely reported.

*(d) Temperature Moderation*

Forested buffers adjacent to wetlands provide ground cover and shade, which helps maintain lower water temperatures in the summer and reduce temperature decreases in the winter. Temperature moderation is important to support healthy ecosystem functions in streams, wetlands, and receiving waters. For example, some studies have found that a minimum of a 40-foot buffer may be adequate to protect streams from excessive temperature elevation following logging, but that an area of 66 to 100 feet may be needed to protect riparian ecosystems from heavy sediment loads (WA ECY, 1992, *citing* Corbett & Lynch, 1985, and Corbett et al., 1978). Removing forest cover can result in apparently minor temperature changes that nonetheless may cause major impacts to fish communities that rely on narrow temperature ranges for survival (Wenger, 1999, *citing* Baltz and Moyle, 1984; Allen, 1995; Morris & Corkum, 1996). Higher water temperatures also decrease oxygen solubility, which harms many organisms and reduces water's capacity to assimilate organic materials and increases the rates at which nutrients solubilize and become available (Wenger, 1999, *citing* Karr & Schlosser, 1978). Because of these impacts, temperature regulation is increasingly viewed as an important function of vegetative wetland buffers.

**(ii) Moderating Hydrology**

Especially in systems where the majority of stormwater moves through the buffer as sheet flow, buffer vegetation aids in slowing flow rates and increasing residence time of the water, allowing more time for infiltration (WA ECY, 1992, *citing* Broderson, 1973). Numerous studies highlight the growing body of evidence that impervious surfaces are a "major contributor to changes in watershed hydrology" that drive physical, chemical, and at times biological shifts in wetland systems (see Wenger, 1999, *citing* Arnold & Gibbons, 1996; May et al., 1997, Trimble, 1997, Ferguson & Suckling, 1990; see also Crance, 1988). Wenger thus recommends that municipalities experiencing urban and suburban growth should consider enacting impervious surface controls in addition to buffers.

Buffer size also mediates hydrology, which plays a significant role in impacting other wetland functions (Nieber et al., 2011). The location and type of surface runoff as well as the magnitude of subsurface flow strongly influence the effectiveness of buffers (Id.). Based on variability of wetland buffer functions, this study and literature review recommended development of buffer ranking tools to further quantify how management goals were being met by established wetland buffers. While beyond the scope of this report, further study and quantification of wetland and buffers would be warranted, especially given the absence of location-specific data for highly erodible soils in the Pacific region.

**(iii) Providing Habitat**

While few studies quantify the efficacy of buffers for habitat protection in the Pacific region, a wealth of data exists linking the importance of vegetative buffers to habitat functions. Moreover, intermittent systems that occur in semi-arid or tropical systems are sometimes mistakenly considered to provide little functional value. However, increasing literature indicates that intermittent stream systems play critical roles in maintaining wetlands, which in turn provide biological linkages for species adapted to these unique conditions (see City of Boulder, 2007). In

two studies of California streams, both Erman et al. (1977) and Newbold (1980) found that a 98-foot buffer zone was successful in maintaining background levels of benthic invertebrates in streams adjacent to logging activities (WA ECY, 1992). Thus, establishing buffers on even intermittent streams can protect habitat values and functions of interconnected wetland systems.

Wetland buffers can also help systems maintain habitat functions that may otherwise be impacted due to nearby disturbances. In an assessment of 21 post-human disturbance wetland restoration projects, Cooke et al. concluded that effectiveness of a buffer in protecting adjacent wetlands was dependent on intensity of adjacent land use, buffer width, buffer vegetative cover type, and buffer area ownership. Buffers functioned most effectively when adjacent development was low intensity, when buffer areas were vegetated with shrub and/or forested plant communities and were 50 feet wider or greater, and when land owners understood the rationale for maintaining these buffer areas (Id.). In Hawaii, the Hawaii Conservation Reserve Enhancement Program supports wetland buffers of not less than 20 feet and up to 1,320 to support habitat values and ecosystem functions (HI DLNR, 2013).

### **III. Recommendations and Next Steps to Maintaining Healthy Wetlands in CNMI**

This literature review highlights the importance of implementing minimum buffers on wetland systems to protect ecosystem functions and values. Authoritative sources indicate that adequate buffers are essential for “healthy” wetland systems (*see e.g.* Kusler & Kentula, 1989; Haycock et al., 1996). While few empirical studies have been published regarding wetland buffers in the Northwestern Pacific, extensive literature reviews of buffer studies across the United States as well as select international reports indicate that vegetative buffers are effective at protecting water quality of wetland systems, and that in general, buffer efficiency at filtering out pollutants increases exponentially with width to a certain extent (*see e.g.* WA ECY, 1992; Wenger, 1999; Hawkes and Smith, 2005; Kusler & Kentula, 1989; Davies & Lane, 1995; Haycock et al., 1996; Parkyn, 2004). However, as some literature notes, increasing filtration efficiency “does not increase infinitely;” for example, a study in the Mid-Atlantic found that 90% of sediments were removed by a 62 ft riparian buffer, but only 94% were removed by more than doubling the buffer width to 164 ft” (Hawkes and Smith, 2005). While ranges and the application of buffers vary, there is considerable consensus that to protect wetland values and functions, necessary buffers range from a minimum of 45 to 100 feet (15 – 30 meters) to maintain the “physical and chemical characteristics of aquatic resources” with widths towards the upper end of this range appearing “to be the minimum necessary for maintenance of the biological components of many wetlands and streams” (Castelle et al., 1994). Other reviewers conclude that, in the context of development and other natural stressors, buffers of 150 – 300 feet in size are recommended (JEA et al, 1999). To protect wildlife habitat functions, some studies indicate 100 – 600 foot buffers are recommended (Hruby, 2013), while, in Hawaii, vegetative buffers up to 1,320 feet are incentivized to protected wetland health and water quality (DLNR, 2013). Minimum buffer sizes to support specific management values that are suggested by the Center for Watershed Protection and USEPA are provided in Table 1 below.

**Table 1: Recommended Wetland Buffer Sizes by Ecosystem Function**

Function	Special Features	Recommended Minimum Width (feet)
Sediment reduction	Steep slopes (5-15%) and/or functionally valuable wetland	100
	Shallow slopes (<5%) or low quality wetland	50
	Slopes over 15%	Consider buffer width additions with each 1% increase of slope (e.g., 10 feet for each 1% of slope greater than 15%)
Phosphorus reduction	Steep slope	100
	Shallow slope	50
Nitrogen (nitrate) reduction	Focus on shallow groundwater flow	100
Biological contaminant and pesticide reduction	N/A	50
Wildlife habitat and corridor protection	Unthreatened species	100
	Rare, threatened, and endangered species	200-300
	Maintenance of species diversity	50 in rural area 100 in urban area
Flood control	N/A	Variable, depending on elevation of flood waters and potential damages
Source: Center for Watershed Protection and United States Environmental Protection Agency. 2005. <i>Wetlands and Watersheds: Adapting Watershed Tools to Protect Wetlands</i> .		

In the CNMI, minimum vegetative buffers of 50 feet and 100 feet for “high value” wetlands were recommended by the Saipan Comprehensive Wetland Management Plan of 1990 (Comprehensive Management Plan) (ERCE, 1991). The Comprehensive Wetland Management Plan proposed ranking criteria for CNMI wetlands which include hydrophytic vegetation dominance, structural diversity, proportion of native to non-native plant species, extent and frequency of disturbance, wetland-dependent wildlife use, presence of endangered species, wildlife corridor, drainage system, open water component, size significance, and degree of isolation. This approach was adopted by the Bureau of Environmental and Coastal Quality’s Division of Coastal Resources Management in the 2015 Rapid Assessment Methodology (RAM). With the development of this guide, wetland systems can be quantitatively valued, and high value systems can be afforded greater protections. As it is currently written in the CNMI RAM, reflecting the 1990 Comprehensive Saipan Management Plan, “High Value” wetlands are allocated larger buffer areas to support a range of conservation values, while “Low Value” wetlands are allotted smaller buffers that are still intended to maintain the integrity of those systems. The objective of these buffers is to allow for an expanded range of uses while controlling indirect impacts associated with development to sensitive wetlands.

As highlighted in Table 1 management goals influence recommended buffer sizes. A minimum 50-foot buffer will support sediment and nutrient reduction on shallow slopes and reduce biological contamination. On steeper slopes, or in more urban areas, higher buffer widths of 100-foot are recommended to further protect water quality. If the wetland system provides endangered species habitat, even larger buffers are recommended. Thus, the minimum recommended buffers suggested in the 1990 Comprehensive Saipan Management Plan are consistent with and reflect best available science from other jurisdictions.

Although studies that are specific to the unique ecosystems in the CNMI are lacking, it stands to reason that minimum buffer requirements from other jurisdictions can be applied to systems in the Pacific using a precautionary resource management approach. While further study and

interagency discussions are warranted, a continuation of the 50-foot minimum buffer for all wetlands and 100-foot buffer for “high value” wetlands is encouraged to achieve water quality and ecosystem management goals. In areas with steep slopes or which are exposed to a large influx of urban nonpoint source pollution, doubling these minimum recommended buffers may be necessary to ensure no degradation of water quality or the wetland system as a whole.

While buffer width recommendations vary depending on site conditions and management goals, there is also value in fixed-width buffer recommendations; they are more easily established and enforced, allow for greater regulatory predictability, and require smaller expenditures in both time and money to administer (Castelle et al., 1994). Moving forward, recommendations of the 1990 Comprehensive Management Plan and the 1996 CNMI Wetlands Management Report to Governor Froilan C. Tenorio (Wetlands Management Report) should be revisited. Considering the growing development pressure and limited available land in the CNMI and on Saipan specifically, the suggestion of continued interagency dialog to discuss the establishment and management of a wetland mitigation bank in compensation for activities that result in wetland loss or degradation may be prudent.

As the 1996 Wetlands Management Report noted, despite challenges and shortcomings, mitigation banking may provide a more efficient and predictable regulatory process, as well as a means to recover certain wetland dependent endangered species. Moreover, “wetland mitigation banking is but one of several methods that can be used to improve the wetland regulatory framework, where ‘improve’ means streamlining the wetland regulatory framework, making it more efficient for applicants and regulators, and minimizing the negative impacts to wetlands from compensatory wetland mitigation” in the CNMI (Wetlands Management Report). Other tools to maintain the “no net loss” wetland policy, such as the development of wetland replacement and restoration guidance for areas that have been or are proposed to be impacted or filled, should be pursued.

## References

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**MARIANAS**  
VISITORS AUTHORITY

P.O. BOX 500861 CK  
SAIPAN, MP 96950  
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## Public Notice of Adoption of the Tour Guide Certification Rules and Regulations for the Marianas Visitors Authority

**Notice of Adoption:** The Marianas Visitors Authority (MVA) Board of Directors approved the adoption of the Tour Guide Certification Rules and Regulations at its meeting of September 19, 2017.

**Prior Publication:** These regulations were proposed on July 11, 2017, and appeared in the July 28, 2017 Commonwealth Register [39 Com. Reg. 039832].

**Modifications from Proposed Regulations, If Any:** None.

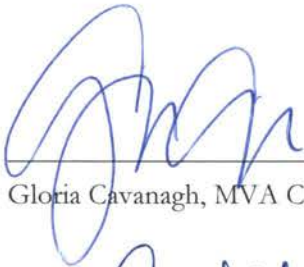
**Authority:** These regulations are promulgated under 4 CMC § 2103(o), which authorizes MVA to regulate the tour industry through the issuance of certifications to tour operators and tourist land/sea transport operators, and 4 CMC § 2112(3), which grants MVA the authority to promulgate such rules and regulations and establish reasonable fees as are necessary to carry out its statutory mandates.

**Effective Date:** These amendments will become effective ten (10) days after publication of this Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).


### Comments and Agency Concise Statement:

Pursuant to the APA, 1 CMC § 9104(a)(2), the agency has considered fully all written and oral submissions respecting the proposed regulations. Upon this adoption of the regulations, the agency, if requested to do so by an interested person, either prior to adoption or within thirty (30) days thereafter, will issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling the considerations urged against its adoption. Please see the following pages for this agency's concise statement, if there are any, in response to filed comments.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on the 22 day of September, 2017 at Saipan, Commonwealth of the Northern Mariana Islands.

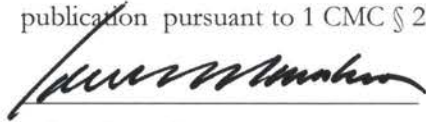
Submitted by:   
Gloria Cavanagh, MVA Chair

Date: 9/22/17

Filed and Recorded by:   
Esther SN. Nesbitt  
Commonwealth Register

Date: 09.25.2017

I certify, pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency. I approve their publication pursuant to 1 CMC § 2153(f).



Date: 9-26-17

Edward Manibusan  
Attorney General

**Commonwealth of the Northern Mariana Islands**  
**DEPARTMENT OF PUBLIC LANDS**  
Marianne Concepcion-Teregeyo, Secretary  
P.O. Box 500380  
Saipan, MP 96950  
Tel. 234-3751

**NOTICE OF PROPOSED AMENDMENT OF REGULATIONS FOR THE  
DEPARTMENT OF PUBLIC LANDS AND**

**INTENDED ACTION: TO AMEND REGULATIONS AFTER CONSIDERING PUBLIC COMMENT:** The Commonwealth of the Northern Mariana Islands, Department of Public Lands (“the Department”) intends to amend its regulations in accordance the attached proposed amendments, pursuant to the procedures of the Administrative Procedure Act, 1 CMC § 9104(a). The amendments would become effective 10 days after adoption and publication in the Commonwealth Register. (1 CMC § 9105(b))

**AUTHORITY:** The Department has the inherent authority to adopt rules and regulations in furtherance of its duties and responsibilities pursuant to Article IX of the Commonwealth Constitution and 1 CMC §2801 et. seq.

**THE TERMS AND SUBSTANCE:** The Department wishes to amend the temporary occupancy agreement (TOA) section of the recently adopted regulations to add clarity, adjust certain fees, and correct errors.

**THE SUBJECTS AND ISSUES INVOLVED:** These amendments:

1. Amend § 145-70-210 (b)(2) to omit the \$.0415 land use fee for livestock permits. In its place, there will be a required fee of \$25 per hectare up to 5 hectares (50,000 square meters).
2. Correct typographical errors to ensure accuracy and coherence in sentence structure.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and this notice shall be posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. (1 CMC § 9104(a)(1)).


**TO PROVIDE COMMENTS:** Send or deliver your comments to the Department of Public Lands Attn: Secretary, at the above address, fax or email address. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. (1 CMC § 9104(a)(2)).

The Department of Public Lands approved the attached Regulations on the date listed below.

Submitted by:  31 AUG 2017  
MARIANNE CONCEPCION-TEREGEYO  
Secretary, Department of Public Lands  
Date

MJP 9/11/17 ✓

Received and filed by:  9/6/17  
SHIRLEY P. CAMACHO-OGUMORO  
Special Assistant for Administration  
Date

Filed and Recorded by:  09.11.2017  
ESTHER SN NESBITT  
Commonwealth Register  
Date

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

Dated the 7 day of September, 2017.

  
Hon. EDWARD MANIBUSAN  
Attorney General

**Commonwealth Gi Sangkattan Na Islas Mariãnas**  
**DIPÁTTAMENTUN TANU' PUPBLIKU**  
Marianne Concepcion-Teregeyo, Sekretária  
P.O. Box 500380  
Saipan, MP 96950  
Tel. 234-3751

**NUTISIAN I MANMAPROPONI NA AMENDASION I REGULASION PARA I  
DIPÁTTAMENTUN TANU' PUPBLIKU YAN**

**I AKSION NI MA'INTENTSIONA: PARA U MA'AMENDA I REGULASION DISPUES DI KUNSIDERAN I UPIÑON PUPBLIKU:** I Commonwealth gi Sangkattan na Islas Mariãnas, Dipáttamentun Tanu' Pupbliku ("I Dipáttamentu") ma'intensiona para u ma'amenda iyon-ñiha Regulasion sigun i mañechettun mapropo ni na amendasion siha, sigun para i Ákton Atministrasion Procedure, 1 CMC §9104(a). I amendasion siha para u ifektibu gi hálum dies (10) dihas dispues di adaptación yan publikasion gi hálum i Rehistran Commonwealth. (1 CMC § 9105(b))

**ÁTURIDÁT:** I Dipáttamentu guaha aturidát-ña para u adopta i Areklamentu yan Regulasion siha ni para u adilánta mo'na i obligasion yan responsabilidát siha sigun i Article IX giya Commonwealth Konstitusion yan 1 CMC §2801 et. Seq.

**I TEMA YAN SUSTÁNSIAN I PALÁBRA SIHA:** I Dipáttamentu manmalagu' na para u ma'amenda tempuráriu i occupancy agreement (TOA) na seksiona gi manma'adápta na regulasion siha ni maloffan para más klaridát, ahusta fitmi na ápas siha, yan na'dinanchi i lachi siha.

**I SUHETU NI MASUMÁRIA YAN ASUNTU NI TINEKKA:** Esti na amendasion siha:

1. Amenda i § 145-70-210 (b)(2) para u suha i \$.0415 na ápas i usan i tanu' para lisensian i livestock. Hálum iyon i sagáña, debi na u gaigi i \$25 ni madimánda na ápas gi kada hektaria hulu' para singku (5) hektaria (50,000 square meters).
2. Kurihi i linachi na typographical siha para asiguru i dinanche-ña yan kinumprende-ña siha gi hálum estrokturan i sentensia.

**DIREKSION PARA U MA PO'LU YAN PARA PUBLIKASION:** Esti i manmapropo ni na amendasion siha debi na u mapublika gi hálum i Rehistran Commonwealth gi hálum i seksiona ni manmapropo ni na regulasion siha (1 CMC § 9102(a)(1)), ya u mapega gi hálum mankumbinienti na lugát siha giya i civic center yan gi hálum ufisinan gubietnu gi kada distritun senatorial parehu Englis yan i lingguáhi natibu, (1 CMC § 9104(a)(1)).

**PARA U MAPRIBENIYI UPIÑON SIHA:** Na'hánao pat na'hálum iyo-mu upiñon siha guatu gi Dipáttamentun Tanu' Pupbliku Atn: Sekretária, giya sanhilu' na address, fax pat email address. I upiñon siha debi na u hálum gi hálum trenta(30) dihas ginin esti na nutisian publikasion. Put fabot na hálum iyo'-mu data, views pat agumentu siha. (1 CMC § 9104(a)(2)).

I Dipattamentun Tanu' Pupbliku ma'apueba i mañechettun na regulasion siha gi fetcha ni malista papa'.

Nina'halum as:   
MARIANNE CONCEPCION-TEREGEYO  
Sekretaria, Dipattamentun Tanu' Pupbliku

31 AUG 2017

Fetcha

MJP 9/11/17 ✓

Rinisibi yan  
pine'lu as:

  
SHIRLEY C. OGUMORO  
Ispisiat Na Ayudanti Para I Atministrasion

9/16/17

Fetcha

Pine'lu yan  
Ninota as:

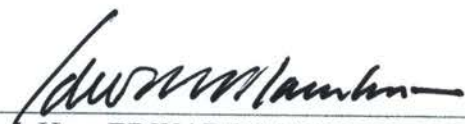
  
ESTHER SN. NESBITT  
Rehistran Commonwealth

09.11.2017

Fetcha

Sigun i 1 CMC § 2153(e) ( I Abugadu Henerat ha apueba i regulasion siha na para u macho'gui kumu fotma) yan i 1 CMC § 9104(a)(3) (hentan inapueban Abugadu Henerat) i manmaproponi na regulasion siha ni mañechettun guini ni manmaribisa yan manma'apueba kumu fotma yan sufisienti ligat ginin i CNMI Abugadu Henerat yan debi na u mapupblika, 1 CMC § 2153(f) (publikasion areklamentu yan regulasion siha).

Mafetcha guini gi diha 7, gi September 2017.



Hon. EDWARD MANIBUSAN  
Abugadu Henerat



**Commonwealth Téél Falúw kka Efáng llól Marianas**  
**BWULASIYOL AMMWELIL FALÚWEER TOULAP**  
Marianne Concepcion-Teregeyo, Sekkretóoriya  
P. O. Box 500380  
Seipél, MP 96950  
Tilifon: 234-3751

**ARONGORONG REEL POMWOL LIWEL REEL MWÓGHUTUGHUT NGÁLI**  
**BWULASIYOL AMMWELIL FALÚWER TOULAP ME**

**MÁNGEMÁNGIL MWÓGHUT: NGÁLI LIWELIL MWÓGHUT MWIRIL AAR RÁGHIIY**

**ATOTTOLONGOL KKAPAS MEREL TOULAP:** Commonwealth Téél Falúw kka Efáng llól Marianas, Bwulasiyol Ammwelil Falúweer Toulap (Bwulasiyo) re pommw bwe rebwe liiweli mwóghutughut ikka e appasch ngáli pommwol liiwel, sangi mwóghutughutúl Administrative Procedure Act, 1 CMC § 9104(a). Liiwel kkal ebwe bwúnguló llól seigh (10) ráál mwiril aal adóptáali me arongowow me llól Commonwealth Register. (1 CMC § 9105(b))

**BWÁNGIL:** Eyoor bwángil Bwulasiyo yeel bwe rebwe adóptáali allégh me mwóghutughut kkal bwe ebwe tééló mmwál reel peirághil aar angaang me mwóghutughutúl sangi Article IX reel Commonwealth Constitution me 1 CMC §2801 et. seq.

**KKAPASAL ME AWEEWEL:** Bwulasiyo re tipáli rebwe liiweli temporary occupancy agreement (TOA) táilil igha re gheláál adóptáali mwóghutughut bwe ebwe affata, siiweli ákkáaw óbwóss, me awelaló mille e bwáá bwe ese wel.

**KKAPASAL ME ÓUTOL:** Liiwel kkal:

1. Liiweli § 145-70-210 (b)(2) amwóyló \$.0415 reel yááyál falúw ngáli livestock permit. Llól leliyál, ebwe yoor fee \$25 reel hectare mwet ngáli 5 hectares (50,000 reel square meters).
2. Awela typographical error bwe ebwe welewele me ebwe ffat meta faal llól sentence.

**AFAL REEL AMMWELIL ME ARONGOWOWUL:** Pommwol liiwel kkal ebwe akkatééwow me llól Commonwealth Register llól táilil pommwol me ffél mwóghutughut ikka ra adóptáali (1 CMC § 9102(a)(1)) me ebwe appasch arongorong yeel llól civic center me bwal llól bwulasiyol gobetnamento llól senatorial district, fengál reel kkasal English me mwáliyaasch. (1 CMC § 9104(a)(1)).

**ATOTTOLONGOL MÁNGEMÁNG:** Afanga ngáre bwughiló yóómw iischil mángemáng ngáli Bwulasiyol Ammwelil Falúweer Toulap Attn: Sekkretóoriya, reel féléféle iye weiláng, fax ngáre email address. Ebwe toolong fóós llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel. Isiisilong yóómw data, views ngáre angiingi. (1 CMC § 9104(a)(2)).

Bwulasiyol Ammwelil Falúweer Toulap re átirow reel Mwóghutughut ikka e appasch wóól ráál iye e lo faal.

Isáliyalong: \_\_\_\_\_

MARIANNE CONCEPCION-TEREGEYO

Sekkretóoríyal, Bwulasiyol Ammwelil Falúweer Toulap

MJP 9/11/17 ✓

31 AUG 2017

Ráál

Bwughiyal: \_\_\_\_\_

SHIRLEY R. CAMACHO-OGUMORO

Special Assistant ngáli Administration

9/16/17

Ráál

Ammwelil: \_\_\_\_\_

ESTHER SN. NESBITT

Commonwealth Register

09.11.2017

Ráál

Sáangi 1 CMC § 2153(e) (Allégh kkal e bwe lléghló sáangi AG bwe aa fil reel fféerúl) me 1 CMC § 9104(a)(3) (mwiir sáangi aal lléghló merel AG) reel pommwol mwóghutughut ikka ra takkal amwuri fischiiy me aa lléghló reel fféerúl me legal sufficiency sáangi Soulemelemil Allégh Lapalalpal CNMI me ebwele akkatéwow, 1 CMC § 2153(f) (arongowoowul allégh me atiiwligh).

E makketiw wóól \_\_\_\_\_

7

ráálil September, 2017.



Hon. EDWARD MANIBUSAN

Soulemelemil Allégh Lapalalpal

- (4) Be reviewed periodically for compliance;
- (5) Prohibit the construction of permanent structures;
- (6) Provide non-exclusive rights to the land or property unless otherwise stated in these regulations;
- (7) Be non-transferable, non-assignable, and cannot be sold, subjected to mortgage, or used as collateral;
- (8) Self-terminate should Occupant or Operator cease to exist or ceases the activity described in the application; and
- (9) Require compliance with all business licensing, permitting, and regulatory requirements for business or other activities to be conducted including without limitation all zoning, building and other permits as applicable.
- (10) Property valuations for purposes of calculating fees for TOA's may be determined by DPL's in-house appraiser.

### **§ 145-70-205 Occupancy and Easements for Private Telecommunications**

Non-exclusive occupancy rights or easements granted to non-governmental telecommunications service providers may be granted for multiple year terms up to twenty five (25) years in total. Occupancy or proposed uses that sever, transect, or present a material impediment to the use of the surface land or air above or otherwise render the burdened and/or adjacent lands undevelopable, shall not be eligible for easement or similar authorization contemplated in this section but instead, shall only be authorized through leases of fully burdened parcels on commercially reasonable terms in accordance with the leasing regulations set forth herein.

- (a) **Underground Telecommunication Cables** – The activity involving the use of public lands to lay, maintain and operate underground telecommunication cable wires and related telecommunication equipment. Upon promulgation of these regulations the annual fee for buried cable trenches shall be 5.0% per year of 50.0% of average market price of lands on the island where the trenching will occur. Average market price shall be an area-weighted average determined by DPL based on recent publicly available real estate sales data for fee simple land transactions.
- (b) **Telecommunication Tower** – The activity involving the use of small parcels of public lands to, erect, maintain and operate commercial pedestals, access nodes underground telecommunication cable wires and radio transmitter antenna, and or wireless communication equipment shelter for cellular telephones, paging systems or similar related wireless telecommunication equipment. The annual fee for the use of public land for this purpose shall be 8.00% of the estimated fair market value. In environmentally, historically, or otherwise sensitive areas including tourist destinations, such activity (if permitted in DPL's sole discretion) may be subject to space-sharing conditions as imposed by DPL.

### **§ 145-70-210 Temporary Occupancy Agreement**

Temporary Occupancy Agreements (TOA) shall be used for the temporary occupancy of certain public lands laying fallow at the time of application where no proposals have been received by DPL for the long term lease of those lands. In any case, TOA's do not in any way grant an interest in the land, written or implied, and the new construction of permanent structures shall not be allowed. Allowable purposes include short-term agricultural use, temporary livestock grazing, sporting or social events, or planning activities in anticipation of a lease. TOAs are subject to termination upon thirty

(30) day's written notice by DPL. DPL will consider issuing 5-year agricultural permits to NRCS eligible candidates.

For applications submitted by CNMI government entities for sporting events, signboards/banners, filming, and social events, DPL may provide an annual TOA for multiple department/agency requests throughout the period covered by the TOA provided, however, that the department/agency submits a written request to the Secretary for each occurrence. The Secretary may approve such requests via letterhead within thirty days of receipt after which the request shall be deemed approved if no action is taken by the Secretary. All fees and insurance requirements may be waived provided that the department/agency indemnify DPL of all risks and liabilities.

- (a) The following apply to all TOA's:
  - (1) All TOAs are terminable by DPL at will;
  - (2) Applications for renewal (if any) shall be made annually two months prior to expiration or as solicited via a Request for Proposal or at auction;
  - (3) Unless otherwise provided in this section the fee per use shall be an annual charge of 8% of estimated value but not less than \$250 per month and 3% of revenue generated, or such greater amount as bid;
  - (4) TOAs are non-exclusive with the exception of Agricultural, Staging, and Quarry which shall be exclusive and limited to the activities performed directly by Occupant;
  - (5) Property shall be used solely as outlined in the application for TOA in accordance and DPLs regulations for the operations of the Occupant;
  - (6) DPL can demand the removal of any and all structures at any time at Occupant's expense;
  - (7) Liability insurance shall be required with exception of Agricultural (Farming and/or Livestock) and Residential Maintenance. The policy shall name DPL and the Commonwealth as co-insured, with a minimum coverage of \$50,000 in an action for wrongful death, \$200,000 for each occurrence, \$100,000 in bodily injury per person, and \$100,000 in property damage for each occurrence, or such higher amounts as DPL may reasonably require; and
- (b) Agricultural use shall be limited to family subsistence (non-commercial) purposes and shall only be permitted as follows:
  - (1) Farming - limited to up to 2,000 square meters (per household) of public lands determined by DPL to be suitable for farming, the annual application fee shall be \$250.00 per TOA; and
  - (2) Livestock – limited to up to 50,000 square meters (per household) of public lands for cattle grazing; or livestock (i.e., raising of poultry, goats and hogs), the annual application fee shall be \$225.00 per TOA. TOA's shall be assessed an annual fee of \$25.00 per 10,000 square meters (equivalent to 1 hectare) but shall not exceed 50,000 square meters as follows: ~~In addition each non-commercial (subsistence) livestock permit shall be subject to a land use fee of \$.0415 per square meter permitted for use.~~

Area Size	Hectare Fee	Annual Application Fee	Annual TOA Fee
0.01 – 1 Hectare	\$25.00	\$225.00	\$250.00
1.1 – 2 Hectares	\$50.00	\$225.00	\$275.00
2.1 – 3 Hectares	\$75.00	\$225.00	\$300.00
3.1 – 4 Hectares	\$100.00	\$225.00	\$325.00
4.1 – 5 Hectares	\$25.00	\$225.00	\$350.00

- (3) Agricultural uses in excess of the limitations in this subsection, or which require fixed terms shall be subject to the lease requirements of these regulations.

- (c) Vehicular Parking - The activity that involves a location(s) and designated area(s)/assignment(s) on public land where motor vehicles may be temporarily stored or parked shall only be permitted under a temporary occupancy agreement as follows:
- (1) Temporary vehicular parking spaces are categorized as primary, secondary, and tertiary parking zones. The parking zone descriptions for Rota and Tinian, respectively are shown in Schedule 145-70-210(c)(1). The parking zones for Saipan are tied to the Saipan Zoning districts as follows:

<u>Primary</u>	<u>Secondary</u>	<u>Tertiary</u>
GC: Garapan Core	IN: Industrial	AG: Agriculture
GE: Garapan East	VC: Village Commercial	RU: Rural
BR: Beach Road		VR: Village Residential
MC: Mixed Commercial		
PR: Public Resource		
TR: Tourist Resort		

- (2) The annual permit fee per square meter fee shall be \$10.00 for primary, \$6.00 for secondary, and \$2.00 for tertiary zones.
- (3) Parking Permit Fees – Non-Income Generating Non-Commercial Humanitarian or Social Welfare Non-Profits (Charitable Organizations, NMC Foundation, Health & Social Welfare, and Churches). The annual permit fee per square meter shall be \$2.00 for All Zones.
- (d) Signboards/Banners – The activity that involves erecting or placement of a temporary board, poster, banner, a piece of cloth or bunting, placard, or other temporary sign varying in size, color, and design which is temporarily displayed, posted, erected, hung, or tied in a certain public location or tract of land to advertise or to convey information or a direction shall only be permitted as follows:
- (1) Public lands zones for the placement of signboards or banners are categorized as primary, secondary, and tertiary zones identical to Vehicular Parking.
- (2) CNMI government and non-commercial Humanitarian or Social Welfare non-profit organizations shall not be charged a fee for local government funded signboards for public awareness purposes. The fees for the placement of signboard by other Applicants are shown in the tables below:

#### SIGNBOARD PERMIT STANDARD FEES

	Primary Zone	Secondary Zone	Tertiary Zone
Annually	\$600.00	\$350.00	\$250.00
Monthly	\$100.00	\$ 70.00	\$ 50.00

#### SIGNBOARD PERMIT FEES – NON-COMMERCIAL NON-PROFITS

	All Zones
Annually	\$250.00
Monthly	\$ 50.00

- (3) Political signboards: political signboards are charged an administrative processing fee of \$50.00 along with a semi-annual fee of \$100.00 and cannot be erected sooner than six months before the election date. A candidate may erect and place a maximum of Ten (10) signboards on its

respective electoral senatorial district. A Candidate running for office on a CNMI wide election may erect and place a maximum of Twenty (20) signboards on each senatorial district.

- (i) No signboard shall be placed on the western beach side along Tun Thomas P. Sablan and along Beach Road in Saipan, or such other areas as determined by DPL.
  - (ii) No signboard shall be placed or erected on any trees on public land.
  - (iii) No signboard shall be placed or erected on any utility poles.
  - (iv) No signboard shall be placed or erected within 50 feet from any traffic light.
  - (v) No signboard shall be placed or erected within 6 feet of any road pavement and any public right-of-way.
  - (vi) No signboard shall be placed on any public buildings, facilities, monuments, public parks, and tourist sites.
  - (vii) No signboard exceeding dimensions of 4ft by 8ft shall be placed on public land.
- (e) Roadside Vendors - The activity that involves the use of a temporary structure, vehicle, or mobile canteen for the sale of local produce or fish, other perishables or non-perishable items such as handicrafts, trinkets, souvenirs, or other goods, at a permitted distance from the side of a road or thoroughfare at a location(s) or designated area(s)/assignment(s) on public land shall be permitted on the same financial terms as other concession TOA: A monthly fee of at least \$250.00 per concession (up to 100 square feet) shall be charged in addition to 1% of BGR.
- (f) Maintenance - The activity that involves the clearing and cutting of brush or vegetation for no-use purposes (ex. Fire break) may be permitted as follows:
- (1) Up to 300 square meters of public lands adjacent to an Occupant's private property may be cleaned and maintained under a maintenance permit. Residential maintenance permits shall be assessed a non-refundable application fee of \$20.00 per year.
  - (2) Commercial maintenance permits inclusive of commercial beachfront properties within the 150 ft high water mark for beautification purposes (non-exclusive) shall be assessed a non-refundable application fee of \$100.00 per year and shall be subject to an assessment equal to 2% of the estimated fair market value of the premises annually.
- (g) Filming/Photography - The activity involving the use of public lands in the production of video or motion picture films, commercial advertisement filming, photography and other activities that involve video or film production at certain locations or areas of public lands.
- (1) The fee for engaging in commercial motion/still filming or photography on Public Land in any location in the CNMI is \$250.00 per day with the exception of Managaha which is \$500 per day plus location credits within the publication indicating that the film or photograph was taken in the CNMI, the island, and the specific location. Use of any part of a day is charged as one full day. One full day is defined as a continuous 24-hour period beginning at 12:01 a.m. DPL may use discretion in waiving any fee(s) when requested by Marianas Visitors Authority (MVA) on a case-by-case basis, when the commercial motion/still filming or photography on Public Land promotes the CNMI.
  - (2) The fee for still/portrait photography not for commercial publication, sale, or distribution (e.g. family portrait intended for sale only to the subject family) shall be \$1,000.00 per year per commercial photographer.
  - (3) The Occupant shall provide DPL a copy of the finished product, and location credits within the product indicating that the film or photograph was taken in the CNMI, the island, and specific location.
  - (4) Applicants must submit a copy of their CNMI business license, sufficient liability insurance, and an approved CRM (to the extent required) permit along with their application.

- (h) **Staging** - The activity involving the temporary use of public lands to store or place construction equipment, materials, tool sheds, contractor's trailer or field office, and for storage or stockpiling of applicant's materials (e.g. coral, aggregate, or manufactured sand), and other similar uses incidental to a construction project may be permitted as follows: The fee for the temporary use of public land for a staging area is 8.00% of the estimated fair market value per permit year, or a fraction thereof.
- (i) **Quarry** - A large, open excavation or pit from which rock products or other minerals are extracted by excavation, cutting, or blasting (this definition also includes mining activities).
  - (1) The permit shall specify the type of materials the Permittee is authorized to extract and sell.
  - (2) Upon promulgation of these regulations, the Minimum Annual Rent shall be the total of \$12,000. Each year following promulgation of these regulations, the Minimum Annual Rent shall increase by 5.00% in each subsequent year. Additionally, permittee shall pay a Royalty Fee of at least \$3.00 per cubic yard of limestone materials extracted, plus 0.50% of BGR, or such greater amounts as proposed for each category.
  - (3) Extraction of other materials shall be subject to additional permitting and assessed a higher royalty fee as a percentage of market prices as quoted on a major U.S. commodities exchange for those materials or minerals.
- (j) **Encroachment** - The activity involving the temporary use of public land for commercial or residential purposes may be permitted as follows:
  - (1) The annual fee for the temporary permitted encroachment on public land for commercial purposes is based on 8.00% of the estimated fair market value or 3.00% of gross receipts if this amount is greater than the annual permit fee. Assessment of rent against gross receipts shall be apportioned pro-rata based upon increase of business capacity (i.e. showroom space, seating capacity, or the like) by virtue of the encroachment unless the encroachment is deemed by DPL to be of strategic value. However where an applicant's business could not proceed or continue without the use of Public Land (e.g. landlocked parcel, no parking, insufficient ingress or egress, etc.), no such apportionment will apply, and fees will be assessed upon 100% of the business' gross receipts.
  - (2) The annual fee for the temporary use of public land for residential applicant purposes is 8% of the estimated fair market value. Permanent structures will only be permitted under an encroachment permit if they precede the effective date of these regulations (February 8, 2016) and they are located on land that DPL is permitted to lease by law and regulation.
- (k) **Community Events** – The activity involving the temporary short-term use of public land for government or non-commercial activities that benefit the community (e.g. festivals, holiday celebrations, parades, and the like) may be permitted without charge upon approval by the Secretary, provided the permitted event or activity shall be no more than forty-five (45) days in duration.
- (l) **Non-Use** –The activity involving the entry upon public land to survey, appraise, or gather other information necessary or helpful to an applicant to lease public lands; or to enter upon public land to construct authorized improvements for public benefit.

#### § 145-70-215 Concession Agreements

Concession agreements grant the concessionaire the right to conduct business operations from a designated area, zone, or venue on terms determined by DPL.



Office of the Secretary  
Department of Finance



P.O. Box 5234 CHRB SAIPAN, MP 96950

TEL (670) 664-1100 FAX: (670) 664-1115

Public Notice of Proposed Amendments to the Regulations for the  
Department of Finance, Division of Customs

**Notice of Intended Action:** The Department of Finance, Division of Customs (Customs) approved the publication of the following amendments to its Customs Service Regulations. It intends to adopt these regulations as permanent, pursuant to the Administrative Procedure Act, 1 CMC § 9104(a). If adopted, these amendments will become effective ten days after publication of a Notice of Adoption in the Commonwealth Register. 1 CMC § 9105(b).

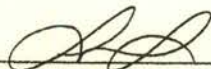
**Authority:** These amendments are promulgated under the authority set forth in the Commonwealth Code including, but not limited to, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 and 4 CMC § 1820.

**Terms and Substance:** The purpose of the amendments to Customs Service Regulations Chapter 70-10 is to establish policy and procedures to implement and provide uniform enforcement of the laws of the Commonwealth of the Northern Mariana Islands administered by Customs; to require Customs to control imports of all articles, wares, or merchandise for the assessment and collection of taxes; and for the interception of harmful elements and other contraband.

**Directions for Filing and Publication:** These proposed amendments shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular (1 CMC § 9104(a)(1)).


**Comments:** Interested parties may submit written comments on the proposed regulations to Larrisa C. Larson, Secretary of Finance, via U.S. mail to the Department of Finance, P.O. Box 5234, CHRB Dandan Commercial Center, Saipan, MP 96950, or via hand delivery to the Office of the Secretary of Finance, Capitol Hill, Saipan, MP. Comments, data, views, or arguments are due within 30 days from the date of publication of this notice. 1 CMC § 9104(a)(2).

Submitted by:

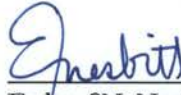
  
Larrisa C. Larson  
Secretary of Finance

Date: \_\_\_\_\_




Received by:   
Shirley Camacho-Ogumoro  
Special Assistant for Administration

Date: 9/6/17

Filed and Recorded by:   
Esther SN. Nesbitt  
Commonwealth Registrar

Date: 09.11.2017

I certify, pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3), that I have reviewed and approved these regulations as to form and legal sufficiency.

  
Edward Manibusan  
Attorney General

Date: 9-11-17



Office of the Secretary  
Department of Finance



P.O. Box 5234 CHRB SAIPAN, MP 96950

TEL (670) 664-1100 FAX: (670) 664-1115

**Arongorongol Toulap reel Pommwol Liiwel ngáli Mwóghutughutúl**

**Depattamentool Finance, Division of Customs**

**Arongorong reel Mángemángil Mwóghut:** Depattamentool Finance, Division of Customs (Customs) re átirow reel akkatééwowul liiwel kka e amwirimwirtiwi ngáli Mwóghutughutúl Customs Service. Re mángemángil rebwe adóptáali mwóghutughut kkal bwe ebwe lléghló, sáangi Administrative Procedure Act, 1 CMC § 9104(a). Ngáre re adóptáali, ebwe bwungulól liiwel kkal llól seígh ráál mwiril aal akkatééwow reel Notice of Adoption llól Commonwealth register. 1 CMC § 9105(b).

**Bwángil:** Liiwel kkal nge aa ffil reel fféerúl faal bwángil iye ebwe mmwetelól mmwal llól Commonwealth Code ebwe bwal aschuulong, nge ese yoor pilil ngáli, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC 1425 me 4 CMC § 1820.

**Kkapsal me Aweewel:** Bwulul liiwel ngáli Customs Service Regulations Chapter 70-10 nge ebwe itittiw afal me mwóghut ngáli peirágh me rebwe ayoora bwe ebwe weewelól enforcement reel alléghúl Commonwealth me Téél Falúw kka Efáng llól Marianas iye Customs re lemeli; re mwuschel bwe Customs rebwe lemeli kkosas ikka e toolong me falúw kka ákkááw reel alongal tappal kkosas, wares, ngáre merchandise ngáli assessment me collection reel tax; me bwal atippa mil kka e nngaw ngáliir aramas me ákkááw ikka esóór bwángil ngáre e nngaw nge re bweibwoghlóng.

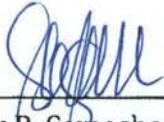
**Afal reel Ammwelil me Akkatééwowul:** Pommwol liiwel kkal nge ebwe akkatééwow llól Commonwealth Register llól tállil pommwol me ffél mwóghutughut kka ra adóptáali (1 CMC § 9102(a)(1)) me ebwe apaschetá llól civic center me llól gobetnamento llól senatorial district, fengál reel kkasal English me mwáliyaasch (1 CMC § 9104(a)(1)).

**Fóós:** Schóó kka re mwuschel isiisilong iischil mángemáng wóól pommwol mwóghutughut kka rebwe isch ngáli Larrisa C. Larson, Sekkretóriyal Finance, vía U. S. Mail ngáli Depattamentool Finance, P. O. Box 5234, CHRB Dandan Commercial Center, Seipél, MP 96950, ngáre bwughilól reel Bwulasiyol Sekkretóriyal Finance, Asúngúl, Seipél, MP. Isiisilongol mángemáng, data, views, ngáre angiingi ebwe toolong llól eliigh (30) ráál mwiril aal akkatééwow arongorong yeel. 1 CMC § 9104(a)(2).


Isáliyalong:

Larrisa C. Larson  
Sekkretóriyal Finance

Ráál: \_\_\_\_\_

Bwughiyal:   
Shirley P. Carnacho-Ogumoro  
Special Assistant ngáli Administration

Ráál: 9/6/17

Ammwelil:   
Esther SN. Nesbitt  
Commonwealth Register

Ráál: 09.11.2017

I alúghúlúgh, sáangi 1 CMC § 2153(e) me 1 CMC §9104(a)(3), bwe I ya takkal amwuri fischiiy me aa átirow mwóghutughut kkal bwe aa ffil reel fféerúl me legal sufficiency.

  
Edward Manibusan  
Soulemelemil Allégh Lapalap

Ráál: 9-11-17



Office of the Secretary  
 Department of Finance

P.O. Box 5234 CHRB SAIPAN, MP 96950

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**Nutisian Publiku Ni Manmaproponi Na Regulasion Siha Para I  
 Dipattamenton I Finansiat**

**NUTISIA PUT I AKSION NI MA INTENSIONA:** I Dipattamenton i Finansiat, Dibision i Customs (Customs) ma'apueba i publikasion i tinattiyi na amendasion siha para iyo-niha Customs Service Regulations. Ma'intensiona para u ma'adapta esti siha na regulasion kumu petmanienti, sigun para i Aktun Administrative Procedures, 1 CMC § 9104(a). Kumu ma'adapta, esti siha na regulasion siempre mu ifektibu gi halum dies (10) dihas dispues di publikasion nu i Nutisian i Adaptasion gi halum i Rehistran Commonwealth. (1 CMC § 9105(b))

**ATURIDAT:** Esti na amendasion siha para u macho'gui gi papa' i aturidat ni mapega mona gi halum i Commonwealth Code iningklusi, lao ti chi-ña para, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 yan 4 CMC § 1820.

**I TEMA YAN SUSTANSIAN I PALABRA SIHA:** I intensiona i amendasion siha para i Customs Service Regulations Chapter 70-10 para u ma'estaplesi i policy yan i manera siha ni para u ma'implimenta ya mapribeni unifotmi na enforcement i lai I Commonwealth gi Sangkattan na Islas Marianas ni mamaneña gi Customs; manisisita i Customs para u gubietna i imports i todun articles, fektus, pat kosas para i ibaluasion yan kuleksion i tax siha; yan para i inturrompi i piligru na elements yan otu contraband.

**DIREKSION PARA U MAPO'LU YAN MAPUPBLIKA:** Esti i manmaproponi na amendasion siha debi na u mapupblika gi halum i Rehistran i Commonwealth gi halum i seksiona ni maproponi yan ñuebu na ma'adapta na regulasion siha (1 CMC § 9102(a)(1)) yan u mapega gi halum i kumbinienti na lugat gi halum civic center yan gi halum ufisinan gubietnamentu siha gi halum distritun senadot, parehu Englis yan gi lingguahin natibu (1 CMC § 9104(a)(1)).


**UPIÑON SIHA:** I manintirisao na petsona siha siña manna'halum tinigi' upiñon ni manmaproponi na regulasion siha para i Sekretarian i Finansiat, Larrisa Larson, via U.S. mail para Dipattamenton i Finansiat, P.O. Box 5234 CHRB, Dandan Commercial Center, Saipan, MP 96950, pat intrega halum gi Ufisinan i Sekretarian Finansiat. I upiñon, data, views, pat agumentu siha nisisita u fanhalum gi halum trenta (30) dihas ni tinattiyi gi fetchan kalendariu gi publikasion nu esti na nutisia. 1 CMC 9104(a)(2).

Nina'halum as:

Larrisa Larson  
 Sekretarian I Finansiat

Fetcha

Rinisibi as:

  
Shirley P. Camacho-Ogumoro  
Ispisiát Na Ayudánti Para Atministrasion

9/6/17  
Fetcha

Pine'lu yan  
Ninota as:

  
Esther SN. Nesbitt  
Rehistran Commonwealth

09.11.2017  
Fetcha

Hu settifikao, sigun para 1 CMC § 2153(e) yan 1 CMC 9104(a)(3), na hu ribisa yan aprueba esti regulasion siha kumu para fotma yan ligát na sufisienti.

  
Edward Manibusan  
Abugádu Henerát

9-11-17  
Fetcha

# Title 70 Department of Finance

2017~~2007~~ Revision (~~August 31, 200~~August 29, 2017)

This is the latest revision of Chapter 70-10 of the Commonwealth Administrative Code in electronic format which replaces the 2010 Revision.

## CHAPTER 70-10

### CUSTOMS SERVICE DIVISION

#### CHAPTER 70-10 CUSTOMS SERVICE DIVISION

#### SUBCHAPTER 70-10.1 CUSTOMS SERVICE REGULATIONS

##### Part 001 - General Provisions 70-10.1-001 Authority

The authority for the promulgation and issuance of Customs Service Regulations ~~No. 4300~~Chapter 70-10, codified in this subchapter, is by virtue of the authority and directions set forth in the Commonwealth Code including, but not limited to, 1 CMC § 2553, 1 CMC § 2557, 1 CMC § 25201, 4 CMC § 1104, 4 CMC § 1402, 4 CMC § 1425 and 4 CMC § 1820. ~~1 CMC 2553, 1 CMC 2557, 4 CMC 1104 [1999], 4 CMC 1402(d) [1999], 4 CMC 1425 and 4 CMC 1818 [1999].~~

##### 70-10.1-005 Purpose

The purpose of the Customs Service Regulations ~~No. 4300~~Chapter 70-10, codified in this subchapter, is to establish policy and procedures to implement and provide uniform enforcement of the laws of the Commonwealth of the Northern Mariana Islands administered by the Division of Customs Service; to require complete customs service to control imports of all articles, wares, or merchandise for the assessment and collection of taxes; and for the interception of harmful elements and other contraband.

##### 70-10.1-010 Regulations Superseded

Except for 1302.33(e)(1) of Customs Service Regulations No. 1300, codified at 70-10.1-720, Customs Service Regulations ~~No. 4300~~Chapter 70-10, codified in this subchapter, supersedes all rules and regulations issued by the CNMI Department of Finance and/or the CNMI Customs Service Division which were published prior to the adoption of Customs Service Regulations No. ~~4300~~Chapter 70-10 which pertain to taxes, fees, and all other laws administered by the Customs Service Division including those rules and regulations issued under Custom--s Service Regulations No. 1300, Customs Service Regulations No. 9101, Customs Service Regulations No. 3300, Customs Service Regulations No. 4300 and all amendments thereto.

##### 70-10.1-015 Customs Service

(a) Administration and Enforcement. The Customs Service Division of the Commonwealth of the Northern Mariana Islands shall consist of trained men and women under the supervision of the Director of Customs Service Division. Almost all of the men and women under the supervision of the Director of Customs Service Division have been trained or are in the process of being trained at the Northern Marianas College Police Academy or have received equivalent training in the military, in college, ~~or police,~~ or customs type academy. Men and women of the

Customs Service are law enforcement officers who are engaged in the enforcement of the excise tax laws, the Commonwealth Controlled Substances Act, the Weapons Control Act, the Anti-Drug Abuse Act of 1991, and other local and federal laws enforced at the ports of entry; and in the interception of other contraband, such as items quarantined by law.

(b) Other Government Agencies. By agreement, the Director of Customs Service Division may utilize the personnel services and facilities of other agencies of the Commonwealth government of the Northern Mariana Islands or other government agencies including the federal government for proper enforcement of excise tax laws, other laws enforced at the ports of entry, and the regulations in this subchapter and other related regulations.

#### **70-10.1-020 Function**

The Customs Service Division of the Commonwealth of the Northern Mariana Islands shall administer and enforce all taxes and fees imposed by chapter 4, division 1, of title 4 of the Commonwealth Code and shall intercept illicit imports of narcotics, non-registered weapons, and other contraband at the ports of entry. The Customs Service Division is hereby authorized to develop procedures and policies, including procedures and policies for the purpose of conducting searches on individuals, not covered by the regulations in this subchapter, necessary for the proper functioning of the Customs Service. All monies due pursuant to chapter 4, division 1, of title 4 of the Commonwealth Code shall be collected by the Customs Service Division and be deposited with the Treasurer of the Commonwealth government.

#### **70-10.1-025 Uniforms and Identification**

(a) Badge. Unless otherwise directed by the Director, all Customs Service personnel must wear metal badges during working hours, and while on official duty. Badges shall be issued by the Customs Service Division, upon assignment of personnel.

(b) Uniform. Unless otherwise directed by the Director, all Customs Service personnel are required to wear the official customs uniform during working hours and while on official duty. The color and design of the uniform shall be prescribed by the Director.

(c) Plastic Identification Card. All employees of the Customs Service Division must wear their plastic identification card during working hours, and while on official duty.

(d) Interim Identification Card. Upon initial assignment of new personnel or when an identification card is lost, an interim identification card shall be issued to employees. All bearers of the interim identification card are authorized access to all areas of operations in the central office, district offices, airports, and other ports of entry, except areas which are specifically restricted to certain employees.

(e) Requirements. Employees of the Customs Service Division are responsible for the safeguarding and proper use of uniform, badges, and plastic identification cards, and for surrendering them upon termination, or upon request of the Secretary or the Director. Any misuse, counterfeiting, alteration, or reproduction is a violation of law and the regulations in this subchapter. All employees must ensure that uniforms and badges are used only in the performance of their duties.

(f) In Case of Loss. All employees must promptly report in writing, the circumstances surrounding the loss of either a Customs Service badge or plastic identification card. Any employee losing his/her badge or plastic identification card will be responsible for compensating the Customs Service Division for the replacement cost if the loss was a result of the employees negligence.

#### **70-10.1-030 Restrictions**

No person is authorized to make, duplicate, or alter any patches, badges, identification cards, passes, logos, symbols or emblems employed by the Customs Service Division. Only authorized employees and other authorized individuals may use, possess, or process any patch, badge, identification card, pass symbol, or emblem employed by the Customs Service Division.

#### **70-10.1-035 Rank**

(a) All personnel assigned to perform Customs Service duties shall be accorded ranking similar to that used in law enforcement or in the military, in their performance as Customs Service officials. Ranking employees assigned to Customs Service shall be in accordance with their supervisory ability, education, training, professionalism in the enforcement of Customs Service duties and responsibilities, satisfactory work performance, and dependability.

Length of employment shall not be used as a determining factor in the ranking of personnel. Nothing in this section shall be construed as to relate to the employees official title during his or her employment with the Division of

Customs. Official title in this section shall mean title shown in the employee's current personnel action. In performing Customs Service activities, personnel assigned shall have the working title of a duly commissioned Customs Service Officer. Working title means the title and rank given to Customs Service officials. The Director shall hold a minimum rank of Colonel, but may be promoted in rank. ~~and~~ The highest rank allowable shall be Four Star General.

(b) All temporary or limited term personnel assigned to perform Customs Service must possess at least eighty hours of practical training and one hundred and twenty hours of classroom instructions in Customs Service or other law or tax enforcement. However, the minimum qualifications in this subsection may be raised pursuant to a procedure established by the Division of Customs, and approved by the Secretary. In appointing supervisors, the appointee must meet at least the minimum requirements for supervisors as established by the Division of Customs.

All permanent personnel assigned to perform Customs Service must have been trained at a police academy or have received equivalent training in the military, college, law enforcement or Customs Service.

#### 70-10.1-040 Records

The Customs Service Division of the Commonwealth of the Northern Mariana Islands shall maintain all records and documents associated with the administration and enforcement of laws enforced and administered by the Customs Service Division. Only authorized employees of the Customs Service Division and other persons authorized by CNMI law shall have access to these records and documents. Except as authorized by law, employees of the Customs Service Division are not authorized to furnish any information to any person regarding another persons records maintained pursuant to law and the regulations in this subchapter and other related regulations.

#### 70-10.1-045 Rota and Tinian District Offices

The Customs Service Division shall have district offices in Rota and Tinian for its activities in these senatorial districts. The functions of the district operations shall be under the supervision of the Secretary of Finance or his or her designee. Personnel supervision of the district offices shall be under each respective Resident Director of Finance.

#### 70-10.1-050 Definitions

(a) Ad valorem: The value of goods, commodities, resources or merchandise.

(b) Alcoholic beverage: Beer or other malt beverage, distilled alcoholic beverage, wine or sake and any other beverage, which contains at least 0.5 percent of alcohol by volume and which is fit for human consumption.

(~~b~~c) Agricultural: The science and art of farming, work of cultivating the soil, producing crops and raising livestock.

(~~b~~d) Aircraft: Every description of craft or other contrivance used or capable of being used as a means of transportation for flight in the air.

(~~e~~e) Annual: Unless the context otherwise requires, means a calendar year.

(~~d~~f) Aviation Fuel: Aviation gas or other aviation material required in the operation of an aircraft or a machine or structure designed to travel through the air, whether heavier or lighter than air.

(g) Beer and other malt beverage: Any beverage made by the alcoholic fermentation of an infusion or decoction, or combination of both, in potable brewing water, of malted barley with hops, or their parts, or their products, and with or without other malted cereals, and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without the addition of carbon dioxide, and with or without other wholesome products suitable for human consumption.

(~~e~~h) Betelnut: The fruit of the betelnut palm, chewed together with lime and leaves of the betel pepper as a mild masticatory stimulant. Betelnut is not classified as a foodstuff, for purposes of 1402(a)(2) of chapter 4 of title 4 of the Commonwealth Code; it has no nutritional value nor is it necessary for the sustenance of life.

(~~f~~i) Bill of Lading or Air Waybill: Documents prepared by the operator or agent of a carrier or non-vessel operating common carrier (NVOCC) listing and describing the contents of the cargo carried on a vessel or aircraft consigned to a person. Bill of lading shall also mean air waybill.

(~~e~~j) Business: The term business shall have the same meaning as a trade or business as that term is applied under 162 of the Northern Marianas territorial income tax; thus, business normally means any regular and continuous activity carried on by a person for the purpose of earning income or profit. Except as otherwise provided, an employee shall not be considered as operating a business, and a partnership or a corporation shall be considered as operating a business.

(~~h~~k) Calendar Month: The period extending from the date in one month to the same date in the succeeding month.



(d) Carrier: Unless the context requires otherwise, means any description of craft or other contrivance used or capable of being used as a means of transportation on the water or in the air, including pleasure vessels, vessels and non-vessel operating common carriers, and private aircraft.

~~(j)m~~ Cigarette: A small roll of finely cut tobacco wrapped in thin paper for smoking and usually having a filter tip. Any preparation of finely cut tobacco or other smokable substance, material, or product rolled in paper and enclosed and packed so that it is held together for smoking. The term "cigarette" shall not include cigars.

~~(k)n~~ Cigarette Labeling: For purposes of 6 CMC 2301(a)(7), the importation of contraband which provides that cigarettes, the package of which fails to bear any warning label which may be required by the United States federal law in relation to cigarettes for the sale or other distribution within the United States, only the following are acceptable labeling under United States federal law:

(1) SURGEON GENERALS WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy;

(2) SURGEON GENERALS WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health;

(3) SURGEON GENERALS WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight; and

(4) SURGEON GENERALS WARNING: Cigarette Smoke Contains Carbon Monoxide.

(h) Consignee: Person to whom items subject to chapter 4, division 1, of title 4 of the Commonwealth Code are shipped for first sale, use, manufacture, lease, or rental.

~~(m)p~~ Construction Equipment and Machinery: Goods used primarily in the construction of a building such as cement mixer, cement trucks, tower cranes, cement blower, and compactors. Construction equipment and machinery does not include equipment and machinery not used primarily in the construction of a building such as pick-up trucks, flat-bed trucks, office equipment, or office machinery.

~~(n)q~~ Construction material: Any materials which are part of the basic components of a building structure. The basic components of a building structure include cement, gravel, lumber, nails, rebar, windows, doors, pipes, hollow blocks, electrical and plumbing supplies, door and window frames, doorknobs, ceramics, tiles, sinks, toilets, and paint.

~~(r)r~~ Consumer: A person who receives, purchases, uses, conserves, dissipates or squanders goods and services.

(s) Consumer goods: All products, goods and materials entering the CNMI, including but not limited to vehicles, retail products, garment material, construction material and all goods that have any form of packaging that will be disposed of or that has a limited useful life after which it will be disposed; provided that this definition shall not include foodstuffs and medicine for sale or otherwise, and goods, products, and materials identified in 4 CMC § 1402 (c)(2), (c)(3), (c)(4) and (d).

~~(t)t~~ Cosmetics: Includes all preparations used as applications to the hair or skin, lipsticks, eye shadows, mascara, pomades, powders, makeup and other preparations not having medicinal properties or hygienic purposes. Cosmetics shall also include hair spray, hair gel, hair jellies, body lotion, tanning products, and body creams.

~~(p)u~~ Customs Agent: Customs supervisor, customs officer, customs inspector, customs captain, customs lieutenant, customs major, ~~customs technician~~, and any person authorized or deputized after authorized to perform the duties of a customs agent including persons employed by another government agency.

~~(q)v~~ Customs Jurisdiction: All compounds of all official ports of entry listed in subsection ~~(g)gmm~~ of this section shall be under the jurisdiction of the Customs Service for clearance purposes in international travel. Customs jurisdiction shall also extend to all U.S. post offices located within the CNMI pursuant to agreement between the U.S. Postal Service and the Commonwealth.

~~(r)w~~ Customs Territory: The islands and territorial waters which lie within the area north of 14 north latitude, south of 21 north latitude, west of 150 east longitude, and east of 144 east longitude, as extended by the Marine Sovereignty Act.

~~(s)x~~ Director: The Director of the Customs Service Division. Any references to the term Chief as used within this subchapter or the laws administered by the Division of Customs is deemed to refer to the Director of the Division of Customs.

(y) Distilled Alcoholic Beverage: Includes aggie, alcohol, brandy, whiskey, any liqueur or any substance known as ethyl alcohol or ethanol and every product of distillation or other process of any fermented liquid which is fit for human consumption.

~~(t)z~~ Domestic Travel: Any travel originating from within the Commonwealth and terminating in the Commonwealth, without transiting or traveling by way of any port outside of the Commonwealth.

~~(u)aa~~ Foodstuff: Any food which has nutritional value, or is necessary for the sustenance of life, and suitable for human consumption including dairy products, bottled drinking water, 100 percent fruit or vegetable juices, and any ingredient primarily used in the preparation of food. Foodstuff shall include animals only if such animals are

~~imported into the CNMI for the primary purpose of human consumption. fruit or vegetable juices, and any ingredient primarily used in the preparation of food. Foodstuff shall include animals only if such animals are imported into the CNMI for the primary purpose of human consumption.~~

~~(vbb)~~ Gross Vehicle Weight: The value specified by the manufacturer as the loaded weight of a single vehicle.

~~(wcc)~~ Hygiene Products: Any goods, merchandise or products necessary for the personal health, safety, and cleanliness of an individual except for child care products exempted under 1402(b)(5) of chapter 4 of title 4 of the Commonwealth Code. Hygiene products shall include, toothpaste, shower soap, toilet tissue, shampoo, hair conditioner, deodorant, tooth brush, hair brush, dental floss, condoms, sunblock, sunscreen, mosquito repellants, ~~women's~~ women's sanitary napkins, and ~~tampax~~ tampons or ~~kleenex~~. Hygiene products shall not include hair spray, hair gels and jellies, papers towels, or napkins. ~~Propose to remove the following from Hygiene (1%) to All Others (5%): Hair Brush, Kleenex.~~

~~(xdd)~~ International Travel: Any travel originating from within the Commonwealth and terminating at any port outside the Commonwealth, or terminating at a port in the Commonwealth by transiting or traveling by way of any port outside the Commonwealth, or any travel originating from outside of the Commonwealth and terminating at any port in the Commonwealth.

~~(yee)~~ Jewelry: All articles made of precious metal or precious or semi-precious stones and capable of being worn for personal adornment. Watches containing precious metal or precious or semi-precious stones shall be considered jewelry. ~~Jewelry does not include watches capable of being worn for adornment.~~

~~(z)~~ ~~Leather Goods or Related Products:~~

~~(1) Materials consisting of animal skin prepared for use by removing the hair and tanning; or~~

~~(2) Articles made of fur on the hide, pelts, or any animal skin dressed for use or in which such article has a component fur on the hide, pelts, or any animal skin.~~

~~(3) Leather goods or related products shall not include footwear or watches, containing leather bands capable of being worn for adornment.~~

~~(zff)~~ Leather goods or Related Products: Any and all articles made of fur on the hide, pelts, or any animal skin dressed for use or in which such article has as a component fur on the hide, pelts or any animal skin. Leather goods or related products does not include footwear or watches.

~~(aagg)~~ Liquid Fuel: All liquids ordinarily, practically and commercially usable in internal combustion for the generation of power and shall include all distillates of, and condensates from petroleum, natural gas, coal, coal tar and vegetable or plant ferments, such distillates and condensates being ordinarily designated as gasoline, butane, naphtha, benzol, benzene, kerosene and alcohol so usable but not restricted to such designation.

~~(bbhh)~~ Manifest: A summary list of passengers or cargo on board a carrier, unless the context requires otherwise.

~~(eejj)~~ Manufacture: The art of making raw material into a product suitable for use, sale, lease, or rental, and includes the technique and methods of converting finished merchandise into another product for use, sale, lease, or rental.

~~(ddjj)~~ Merchandise: Goods, wares, and chattels of every description and includes merchandise the importation of which is prohibited or restricted.

~~(eekk)~~ Normal Working Hours/Days: Except as otherwise provided, the term normal working hours or normal working days means those established hours or days scheduled by the Director or Secretary, up to maximum of eight hours per day and forty hours per week.

~~(ffll)~~ NVOCC: Whenever this abbreviation is used in this subchapter, it means non-vessel operating common carrier.

~~(egmm)~~ Official Customs Port of Entry:

(1) All vessels and aircraft on international travel and authorized entry into the customs territory of the Commonwealth must enter and obtain customs clearance from any of the following official customs ports of entry:

(i) Saipan. The primary official customs ports of entry on the island of Saipan are Tanapag Harbor (Charlie Dock) and Isley Field (Saipan International Airport) and U.S. Post Office or other Postal Service Facilities. The secondary official customs ports of entry on the island of Saipan are Sugar Dock, Baker Dock, Smiling Cove, and Garapan Fishing Complex. Secondary official customs ports of entry are authorized points of entry provided twenty-four hour advance notice of such use is made to the Customs Division.

(ii) Rota. The official customs ports of entry on the island of Rota are the Harbor (West Dock) and Rota International Airport and U.S. Post Office or other Postal Service Facilities.

(iii) Tinian. The official customs ports of entry on the island of Tinian are the Harbor and West Tinian Airport and U.S. Post Office or other Postal Service Facilities.

(2) A vessel or aircraft in distress may anchor or land at any port in the Commonwealth but shall immediately notify the nearest Customs Service office for immediate Customs clearance.

~~(hnn)~~ Person: Means any individual, firm, corporation, company, joint venture, association, partnership, receiver, club, syndicate, cooperative association, or any other entity.

~~(oo)~~ Passenger vehicle: Any vehicle with four wheels or more: (1) Which is manufactured primarily for use on public streets, roads, and highways, and (2) Which is rated at 2.5 ton (or its metric equivalent) gross vehicle weight or less.

~~(ii)~~ Personal and Office Computer Equipment: Includes only computers and related equipment imported for personal or business use by a consumer. Personal and office computer equipment shall not include computers and related equipment imported for the primary purpose of resale.

~~(jpp)~~ Precious Metals, Precious or Semi-Precious Stones or Related Commodities: Includes any metal, stone, or related commodity valued for its rarity or appearance such as gold, silver, platinum, diamonds, emeralds, rubies, or sapphires not attached or mounted to any article. Precious metals, precious or semi-precious stones will be classified as jewelry if they are attached or mounted to any article.

~~(kkqq)~~ Prescription Drug: A controlled substance, as identified at schedules I through V of 6 CMC div. 2113 through 2122, that is obtained directly from, or pursuant to a valid prescription or order of a practitioner while acting in the course of his or her professional practice.

~~(Hrr)~~ Public Utility: Any person that owns, controls, operates, or manages a business which supplies or furnishes the public with commodities, equipment, or services such as telephone, telegraph, electricity, airlines, and shipping lines.

~~(mmss)~~— Raw Material: An article or merchandise that is changed in form or substance or combined with other article(s) in a manufacturing process to become a part of a finished product or to form a new product which is produced in a factory.

~~(tt)~~ Sake: Any alcoholic beverage of fermented rice which is not a beer and does not contain malt.

~~(nnuu)~~ Secretary: The Secretary of the Department of Finance of the Commonwealth government.

~~(eevv)~~ Service: Unless the context otherwise requires, the Customs Service Division of the Commonwealth.

~~(ppww)~~ Softdrink: Any and all readily drinkable carbonated or non-carbonated or non-alcoholic beverage. Softdrink shall not include drinkable dairy products, fruit or vegetable juices, bottled drinking water, beverage containing tea or tea products, coffee or coffee products, and those items that are not fixed without mixing with other drinkable products such as fruit punch, concentrate or cocktail mixers. Any readily drinkable carbonated or noncarbonated nonalcoholic beverage, other than water, milk, and 100% juice.

~~(xx)~~ Tobacco or Tobacco Substitute or Chewable Tobacco Product: Shall mean all tobacco products other than cigarettes, which includes any smokable, chewable, and snuffable tobacco substances.

~~(qqyy)~~ Vessel: The word vessel includes every description of craft or other contrivance used, or capable of being used, as a means of transportation on the water.

~~(#zz)~~ Watches: A small timepiece designed to be carried in the pocket or worn on the wrist, as a pendant, etc. Watches brought in by arriving individuals into the CNMI, regardless of value, for personal use will not be taxed.

~~(ssaaa)~~ Wine: Means a beverage for human consumption consisting of the product of the normal alcoholic fermentation of the juice of any fruit or any natural produce and not containing more than 24 percent alcohol by volume. Wine but shall not include any beverage which contains distilled alcohol such as liqueurs, cordials, and similar compounds. Wine shall include cooking wines to the extent such cooking wines fit within the above definition.

~~(#bbb)~~ Working Days: The term working days includes holiday work, paid annual and sick leave, and administrative leave.

## Part 100 - Excise Taxes

### 70-10.1-101 Taxing Provision

For the privilege of first sale, use, manufacture, lease or rental of goods, commodities, resources, or merchandise in the Commonwealth, for business purposes or for personal use exceeding the value specified in 4 CMC 1402(de), there is imposed an excise tax under 4 CMC 1402(a) of chapter 4, division 1 of title 4 of the Commonwealth Code, unless otherwise provided under 4 CMC 1402(c), 4 CMC 1402(d) or these Regulations.

### 70-10.1-105 Rates

The excise tax rates currently imposed in accordance with 1402(a) of chapter 4, division 1 of title 4 of the Commonwealth Code, as amended by Public Law No. 9-57 on October 6, 1996 are as follows:

Commodities	Tax Rates
Agricultural Commodities	1% ad valorem
Aviation Fuel	3% ad valorem
Beer and Malt Beverage	.02 cents per fluid ounces or fractional equivalent
Boats and Yachts in Excess of \$500,000.00	5.75% ad valorem
Cigarettes	<del>2.00</del> 2.75 cents per 20 cigarettes or fractional equivalent
<u>from September 16, 2014 through September 16, 2017,</u>	
<u>thereafter the rate will be \$3.75 cents per 20 cigarettes or fractional equivalent.</u>	
Construction Material, Equipment and Machinery	3 % ad valorem
Cosmetic	17.25% ad valorem
Distilled Alcoholic Beverages	.18 cents per fluid ounces or fractional equivalent
Foodstuff	1% ad valorem
Goods Derived Locally	1% ad valorem
Hygiene & Toiletries	1% ad valorem
Jewelry	5.75% ad valorem
Leather Goods	5.75% ad valorem
Liquid Fuel	.15 cents per gallon
Passenger Vehicle Not Exceeding \$30,000 Per Unit	5% ad valorem
Passenger Vehicle in Excess of \$30,000 Per Unit	5.75% ad valorem
Perfumery	23% ad valorem
Precious Metals, Precious or Semi-precious Stones	5.75% ad valorem
Prescription Drugs or Medicines	1% ad valorem
Soft Drinks	.005 cents per Fl. Oz.

Tobacco/Tobacco Substitute	60% ad valorem
Wine & Sake	.05 cents per Fl. Oz
Personal Effects/Household Goods (exceeding the fair market value of \$1,000.00)	5% ad valorem
All Others (not otherwise provided by law)	5% ad valorem

**70-10.1-110 Exemptions**

The following items shall not be subject to the excise tax of 1402(a) of 4 CMC:

(a) Capital equipment and machinery. Capital equipment and machinery used in businesses primarily engaged in manufacturing in the CNMI for export outside the CNMI with a fair market value exceeding \$1,000 per unit and raw materials used in businesses primarily engaged in manufacturing in the CNMI for export. Customs Service will certify a qualifying business annually at the beginning of each calendar year during the months of January and February, upon application by the business through the issuance of a certificate to the qualifying business, which is engaged in the CNMI for export outside the CNMI. Application is made to the Director of Customs Service on a form provided by Customs Service. A new business not in existence at the beginning of the calendar year may make application at any time during the year, but must make application to the Director at least thirty days prior to the importation of capital equipment and machinery qualifying for this exemption. Failure to follow the application procedure may result in the disallowance of this exemption;

(b) Churches. Items brought into the CNMI by churches for the purpose of carrying on the religious functions of the church. Items under this exemption shall include items such as sacramental wine for use in religious rites of a religious organization, and chalice, habits, cassocks, vestments, and other items to be used by a religious order;

~~(c) Computer. Personal and office computer equipment as defined by 70-10.1-050(ii) having a value of less than \$5,000, including CPUs, monitors, keyboards, hard drives, printers and software for the initial installment not individual priced, but not including accessories, floppy disks, or other software;~~

(d) Display and Promotion. Goods, commodities, resources, or merchandise, documents, educational and business seminar materials brought into the Commonwealth temporarily and solely for the purpose of display, demonstration or promotion and not primarily for the purpose of sale. Any goods, commodities, resources, merchandise documents or seminar materials temporarily imported under this subsection must be entered pursuant to a written application as follows:

(1) Any items temporarily imported under this section, in order to be free of tax, must be entered pursuant to and following a written application filed with the Secretary of Finance. The application filed with the Secretary should specify at the minimum, the following:

(i) The type and amount of goods, resources, merchandise, documents and materials to be temporarily imported;

(ii) The reason(s) for the temporary importation;

(iii) The expected date and method (air, sea, hand carry, etc.) of importation and the expected date and method of re-exportation of the items;

(iv) The name and address of the importer as well as that of the local contact person or firm(s); and

(v) The value of the goods, resources, merchandise, documents and materials and the location(s) of the display or demonstration sites for the items.

(2) The Secretary of Finance will review any such written application for temporary importation for the purpose of display, demonstration, and promotion and will issue, if he finds it appropriate, a written permit for such temporary importation, which either shall be free of tax or defer taxes.

(3) The Secretary of Finance may place restrictions on any temporary importation free of tax under this subsection, including a reasonable fee for customs inspection and supervision of the items. Upon review and approval of the application, the Secretary may defer taxes, waive penalties and interest for purposes of business promotion for a period of two years when it is in the best interest of the Commonwealth. This application may be renewed on one year increments upon resubmission and re-approval of the Secretary for maximum total period of three years. In addition, he may require the posting of a bond to ensure the departure of the goods, impose appropriate security requirements, impose requirements for periodic customs inspection of the items at the site(s) of display, demonstration or promotion and any other reasonable restrictions to ensure that all relevant items are in fact used only for temporary display, demonstration or promotion and are re-exported from the Commonwealth at the close of

the display, promotion or demonstration period. The Secretary of Finance may delegate the responsibility for imposition of a bond and implementation procedures to the Director of Customs Service.

(4) If it is later determined that the importation of any goods, commodities, resources or merchandise is taxable, the Department of Finance will impose such taxes at that time. The Secretary of Finance may waive interest and penalty upon imposition of tax.

(5) A copy of any written permit issued by the Secretary of Finance under this subsection shall be filed with the Customs Service upon the entry of the items into the Commonwealth in order to exempt such items from tax.

(6) As a general rule, applications under this subsection will not be approved from persons or firms already licensed to do business in the Commonwealth. The primary use of this subsection is intended for trade shows, business promotions, seminars, conventions, and regional sales meetings, and the like, held in the Commonwealth;

(e~~d~~) Educational Materials. Books, pamphlets and other educational materials purchased for non-business use by a public or private school or a library open to the public. This exemption includes only books, pamphlets and other educational materials purchased for non-business use directly by a public or private school or a library open to the public and does not include books and other educational materials imported for the primary purpose of the resale of such items to a public school, private school, library open to the public, or any other person. Educational materials shall not include equipment and furniture such as video cassette recorder/player, audio cassette recorder/player, overhead projector, phonograph, movie projector, slide projector, and other instructional audio, video, and visual aids, chairs, desks, and other furniture;

(f~~e~~) Filming. Merchandise or other commodities brought in by a filming or advertising company where its sole purpose is to film commercials, video, or other movies in the Commonwealth for a brief period of time;

(g~~f~~) Films. Rented or leased motion picture films and video tapes brought in by a commercial movie or television company for telecasting or public viewing in a theater. This exemption shall not apply to motion picture films and video tapes which are brought in for sale, lease or rental;

(h~~g~~) ~~Items for Use by Handicap~~ ~~Items~~ Persons with Disabilities. Merchandise, equipment, devices, and other items, including wheelchairs, hearing aids, braille material, canes, walkers, prosthetic devices, braces, crutches, or prescription lenses and eye glasses brought in by persons to be used by handicapped individuals who are either residing or visiting in the Commonwealth. This exemption shall not apply to merchandise, equipment, devices, and other gear brought in for sale, lease, or rent to the handicapped;

(i~~h~~) Infant Items. As determined by the Director, merchandise, equipment, devices, hygiene products, cribs, strollers, highchairs, diapers, lotions, creams, powders, baby foods, baby formulas, baby clothing, baby toys, and other products primarily intended for use in the daily and ordinary care of children aged twenty-four months or less;

(j~~i~~) New Residents or Returning Residents. Personal automobiles, regardless of value, and personal household goods imported into the Commonwealth. This exemption shall apply if these aforementioned items are brought into the Commonwealth by a new resident or a returning resident for the purpose of establishing a household. The new resident or returning resident, as referenced below, must bring in or arrange shipment of the above designated automobile(s) and household goods within six months of first establishing a household in the Commonwealth. For purposes of this exemption, returning resident includes only those persons who have resided outside the Commonwealth for at least two years from the time they last resided in the Commonwealth; Personal automobile(s), personal household goods, and other items imported or brought into the Commonwealth for the purpose of establishing a household. This exemption shall only apply to such items imported or brought from the state, territory, district or country in which the individual was most recently a bona fide resident. The new resident or returning resident, as referenced below, must bring in or arrange shipment of the above designated personal automobile(s), personal household goods, and other items within six months of first establishing a household in the Commonwealth. For purposes of this exemption, returning residents include only those persons who have resided outside the Commonwealth for at least one year from the time they last resided in the Commonwealth;

(k~~j~~) Repair and In-flight Supplies. Engines, parts, testing equipment, other navigational tools, equipment, and in-flight supplies brought in by an airline or shipping line, to repair, maintain, or supply its own vessel or aircraft are exempt. For purposes of this exemption, in-flight supplies shall include only those supplies brought into the CNMI by such airline or shipping line;

(k) Repairman Tools. Tools of repairman brought in to repair or maintain equipment sold, leased, or rented to consumers in the Commonwealth. Tools shall only be exempt under this subsection if such tools are exported from the CNMI within a reasonable time after the equipment is repaired or maintained;

(l) Renewable Energy. Equipment, machinery, merchandise, devices, and other items which produce, or are components of a system that produces, electric power from wind, solar, water, landfill gas, waste, geothermal sources, ocean thermal, ocean current or wave energy, biomass, municipal solid waste, biofuels, or fuels derived from organic sources, hydrogen fuels, or fuel cells where the fuel is derived from renewable sources

(m) Energy Star Items. Refrigerators, stoves, ovens, and other devices for preserving or cooking food, which are certified ENERGY STAR by the U.S. Environmental Protection Agency and the U.S. Department of Energy

(n) Disaster Relief. Non-commercial household appliances not intended for resale, including but not limited to the following: freezers, refrigerators, washers, dryers, and power generators, provided that each item is not more than \$6,000. Notwithstanding any provision of law, this exemption shall be applied once per household separate and apart for each item, for the duration of the declaration of disaster pursuant to 4 CMC § 5142(a) or within thirty days of said declaration, whichever period is longer.

(o) Tax Exempt Organizations. ~~Items brought into the CNMI by an organization granted tax-exempt status by the CNMI Division of Revenue and Taxation, which are for use in furtherance of the organization's tax-exempt purpose. Persons granted tax-exempt status by the CNMI Division of Revenue and Taxation.~~ In order to qualify for this exemption, the ~~person-organization~~ must present to the Customs Division a copy of the letter issued by the CNMI Division of Revenue and Taxation granting the ~~person-organization~~ tax-exempt status. While an application for tax-exempt status is pending with the Division of Revenue and Taxation, the ~~person-organization~~ is not exempt from taxes imposed under chapter 4, division 1, of title 4 of the Commonwealth Code; however, if the ~~person-organization~~ is later determined by the Division of Revenue and Taxation to be exempt from taxation, the ~~person-organization~~ may apply pursuant to the procedures established by the Customs Division for a refund for all taxes imposed under chapter 4, division 1, of title 4 of the Commonwealth Code imposed after (but not before) the ~~person-organization~~ submitted its application to the Division of Revenue and Taxation.

(p) Visitors. Items brought into the Commonwealth by visitors if such items are for the visitor's personal use and consumption and are in a reasonable quantity; and

(q) U.S. and CNMI Government. Goods, commodities, resources or merchandise of the U.S. government or CNMI government, their agencies or instrumentalities. However, this exemption shall not extend to goods, commodities, resources, or merchandise of private parties with whom the U.S. government or CNMI government does business such as federal or CNMI contractors.

#### 70-10.1-115 Non-business Use Exemptions.

(a) ~~Exclusion~~ General Exemption. Except as otherwise provided, any person may bring for personal use and consumption exempt from the excise tax the items specified in 1402(d)(1) of 4 CMC. If the value or quantity of the non-business item exceeds that specified in 1402(e)(1) ~~of 4 CMC~~, the item will be subject to the excise tax only to the extent that the value or quantity of the items exceeds the value or quantity specified in 4 CMC 1402(d)(1) ~~of 4 CMC~~. For purposes of ascertaining which goods, commodities, resources or merchandise equal the first \$1,000 of exempted goods, commodities, resources or merchandise, the value of those goods, commodities, resources, or merchandise with the lowest excise rate shall be included first. ~~For the purposes of 4 CMC 1405(a) and (b), the exemption of 4 CMC 1402(e)(1) of 4 CMC for nonbusiness use applies.~~

(2) Example No. 1: John Doe, a resident, not a new or returning resident imports an automobile into the Commonwealth for personal use having a value of \$24,000. Mr. Doe will be subject to the excise tax under 4 CMC 1402(a)(12). The excise tax calculation is as follows:

Ad valorem on Vehicle Value:	\$24,000.00
Exemption of \$1,000.00 per 1402(c)(1):	(\$1,000.00)
Tax Base:	\$23,000.00
Excise Tax at 5%:	\$1,150.00 (\$23,000.00 x 5%)
<del>\$ 1,150.00</del>	

(23) Example No. 2: Mahi Fishing imports a boat into the Commonwealth for business purposes having a value of \$54,000. Mahi Fishing will be subject to the excise tax under 4 CMC 1402(a)(21). The excise tax calculation is as follows:-

Ad valorem on bBoat Value:	\$54,000.00
Tax Base:	\$54,000.00
Excise tax at 5%:	\$2,700.00 (\$54,000.00 x 5%)

(b) Cigarettes Nonbusiness Use. Except as otherwise provided, any person may bring for personal use and consumption exempt from the excise tax, an amount of cigarettes that are commercially packaged and that do not exceed 30 packages of 20 cigarettes per package. All individuals importing alcohol and tobacco for sale or use shall be assessed and shall pay the alcohol and tobacco excise taxes.

(1) The exemption specified under 4 CMC 1402(d)(2), as modified by 6 CMC 2301(a)(7) of the Cigarette Labeling and Advertising Act, cigarettes and tobacco items shall only apply to individuals 18 years of age or older, and any cigarettes in the possession of a minor will be confiscated and destroyed.

~~(a)~~

(2b) Pursuant to 6 CMC 2301(a)(7)(i) only ten packs of labeled cigarettes; that do not comply with the Cigarette Labeling and Advertising Act or are not contained in the directory of cigarettes approved for sale under Public Law 14-10, section 3(b) [4 CMC 50162] shall be exempt from excise tax. Any additional non-compliant packs of cigarettes will be confiscated and destroyed.

(c) Tobacco, tobacco substitute, or chewable tobacco product Nonbusiness Use. Except as otherwise provided, any person may bring for personal use and consumption exempt from the excise tax, an amount of tobacco or tobacco substitute, or chewable tobacco product or other smokable or snuffable substance, material or product other than cigarettes, not to exceed one pound, provided that such substance, material or product is not contraband.

(1) The exemption specified under 4 CMC 1402(d)(3), as modified by 6 CMC 2301(a)(7) of the Cigarette Labeling and Advertising Act, shall only apply to individuals 18 years of age or older and any such products in the possession of a minor will be confiscated and destroyed.

~~(1) Not complying with the Cigarette Labeling and Advertising Act; or~~

~~(2) Not contained in the directory of cigarettes approved for sale under Public Law 14-10, section 3(b) [4 CMC 50162]~~

~~shall be exempt from excise tax and seizure for each person entering the CNMI for personal use and consumption and any additional non-compliant packs will be confiscated and destroyed.~~

~~(b) Any additional non-compliant packs will be confiscated and destroyed. Ref. PL 10-22~~

(d) Alcoholic Beverages Nonbusiness Use.

(1) Except as otherwise provided, any person may bring for personal use and consumption exempt from the excise tax:

(i) An amount of distilled alcoholic beverages not to exceed 77 ounces;

(ii) An amount of beer or other malt beverage not to exceed 288 fluid ounces; and

(iii) An amount of wine and sake not to exceed 128 ounces.

(2) The exemptions specified under 4 CMC 1402(ed)(4)-(6), (5), and 6 for beer and malt beverages, wine and sake, and alcoholic beverages, etc., shall only apply to individuals 21 years of age or older and any such items in the possession of individuals under the age of 21 will be confiscated and destroyed. For the purposes of 4 CMC 1405(a) and (b), the exemption of 4 CMC 1402(d)(4)-(6) for nonbusiness use applies. Exemption under 70-10.1-110(p) applies to this section.

(e) Renewable Energy Nonbusiness Use. Any person may bring for personal use and consumption exempt from the excise tax, equipment, machinery, merchandise, devices, and other items which produce, or are components of a system that produces, electric power from wind, solar, water, landfill gas, waste, geothermal sources, ocean thermal, ocean current or wave energy, biomass, municipal solid waste, biofuels, or fuels derived from organic sources, hydrogen fuels, or fuel cells where the fuel is derived from renewable sources.

(f) Energy Star Items Nonbusiness Use. Any person may bring for personal use and consumption exempt from the excise tax, equipment, machinery, merchandise, devices, and other items which are certified ENERGY STAR by the U.S. Environmental Protection Agency and the U.S. Department of Energy.

#### **70-10.1-115 Cigarettes and Tobacco Products for Nonbusiness Use**

(a) ~~All individuals importing alcohol and tobacco for sale or use shall be assessed and shall pay the alcohol and tobacco excise taxes. The exemption specified under 4 CMC § 1402(e)(2) as modified by 6 CMC § 2301(a)(7), of~~



the Cigarette Labeling and Advertising Act, cigarettes and tobacco items shall only apply to individuals 18 years of age or older. Only ten packs of labeled cigarettes:

- (1) Not complying with the Cigarette Labeling and Advertising Act; or
  - (2) Not contained in the directory of cigarettes approved for sale under Public Law 14-10, section 3(b) [4 CMC § 50162] shall be exempt from excise tax and seizure for each person entering the CNMI for personal use and consumption.
- (b) Any additional non-compliant packs will be confiscated.

~~70-10.1-120 Alcoholic Beverages~~

~~The exemptions specified under 1 CMC § 1402(e)(1), (5), and (6) for wine and sake and alcoholic beverages, etc., shall only apply to individuals 21 years of age or older. Exemption under 70-10.1-110(q) applies to this section.~~

**70-10.1-125 Wine and Sake for Religious Use**

Wine and sake imported into the Commonwealth for use in a religious rite by a religious organization are not subject to the alcohol and tobacco (~~Delete tobacco~~) excise taxes. The same treatment is accorded to wine and sake purchased in the Commonwealth or received by a religious organization for use in a religious rite. Wine and sake imported, purchased, or received by a religious organization for purposes other than a religious rite are not exempted from the alcohol and tobacco (~~Delete tobacco~~) excise taxes.

**70-10.1-130 Government Sale**

All articles, goods, wares, or merchandise imported by a government agency for use by the government and later sold to a private person or imported by the government for sale to a private person are required to be assessed excise tax as provided in chapter 4, division 1, of title 4 of the Commonwealth Code and must be paid by the purchaser. The excise tax shall be assessed on the selling price of the article, good, ware, or merchandise. For purposes of this section, selling price excludes overhead charge or other administrative charges imposed by the government agency.

**70-10.1-135 Sale of Unclaimed Merchandise**

All unclaimed articles, goods, wares, or merchandise not confiscated by the Service pursuant to 70-10.1-540 of this subchapter and sold by the Service pursuant to part 600 of this subchapter which the Service allows to be sold by the terminal operator, operator of carrier, or shipping company, are required to be assessed excise tax as provided in chapter 4, division 1, of title 4 of the Commonwealth Code and must be paid by the seller. The excise tax shall be assessed on the selling price of the article, good, ware, or merchandise.

**70-10.1-140 ~~Damage or~~ Non-receipt, or Warrantied Items**

(a) ~~Non-receipt of~~ Non-concealed Damages. Any merchandise subject to tax which is not received by the importer or which is received in damaged condition may be exempt from taxation upon presentation of a certificate of damage or non-receipt from the carrier or his agent; provided, however, that the carrier or his agent shall either deny the claim or furnish the certificate of damage or non-receipt within seven days after such damage or non-receipt is reported by the importer.

(b) Concealed Damages. Within the time prescribed by 4 CMC 1809(a)(3), importers may apply for a refund of taxes paid to the extent of losses incurred on damaged merchandise, non-receipt, or manufacture defect where such damage was concealed. However, the damage shall be inspected by the customs agent, who, depending on his or her findings may recommend a tax refund.

(c) ~~Warrantiedee~~ Items. Merchandise or goods that are repaired or replaced in accordance with the terms of warranties given by manufacturers or sales agents are exempt from excise tax.

(~~ed~~) Limitations Upon Refund. No tax refund shall be authorized under subsections (a) or (b) for the following:

- (1) Damage resulting from improper handling, inadequate or improper storage facility, prolonged storage, or other causes due to the importers failure to provide such security, proper handling, and storage;
- (2) Merchandise or commodities wherein the date set by the manufacturer as to date for sale or use has expired or been exceeded; or
- (3) Merchandise or commodities which were not used, sold, or distributed due to obsolescence.

(~~ec~~) No Duty to Inspect. Terminal operators or the carrier of the imported merchandise shall not be required to open shipments for damage inspection.

#### 70-10.1-145 Payment of Taxes; Release of Goods

(a) Customs Clearance. In case of goods, commodities, resources, or merchandise whose first use in the Commonwealth requires customs inspection and clearance, payment shall be made within 30 days after entry. Such goods, commodities, resources, or merchandise may be released prior to payment of excise tax as prescribed by 4 CMC 1407(b) and (c) and provided the consignee has no delinquent taxes, fees, or charges due and owing the Commonwealth. Where the actual amount of tax cannot be determined within 7 calendar days after the entry, an estimated tax shall be paid within 30 days after entry; any refund of excess estimated tax paid must be applied for within the time prescribed by 4 CMC ~~1409, 1809(a)(3)~~.  
[Reserved.]

#### 70-10.1-150 Procedure; Permanent Deposit

A permanent deposit may be authorized to permit the release and delivery of dutiable merchandise prior to making formal entry and paying the actual tax due when required. After ninety days from the date of first use in the Commonwealth of such goods, commodities, resources, or merchandise, any and all unpaid taxes owed to the Service will be considered delinquent and sent to Customs Compliance for collections, ~~and will be sent for collection to the Collection Branch, Division of Revenue & Taxation.~~

#### 70-10.1-155 Nonpayment of Excise Taxes When Due

~~In addition to the penalty and interest provisions of division 1, title 4 of the Commonwealth Code, in particular 1815, consignees owing the Commonwealth~~ Consignees owing the Commonwealth excise taxes which are not paid within thirty calendar days after the entry of the goods, commodities, or merchandise, shall be denied clearance and released on future imports of goods, commodities, or merchandise. The Customs Service shall require ~~the consignees~~ to pay any outstanding ~~the excise taxes, penalties, and interest~~ on imported goods, commodities, or merchandise prior to the release of such goods, commodities, or merchandise.

#### ~~70-10.1-160 Customs Exemption for Domestic Travelers~~

~~(a) Duty free Purchases. Passengers and crew members in domestic travel as defined in 70-10.1-050(t), and passengers and crew members boarding a carrier in international travel in Saipan, Rota, Tinian and other islands in the Commonwealth, or vice versa and destined for any port in the Commonwealth may bring with them no more than two fifths of a wine gallon of distilled alcoholic beverages and not more than thirty packages of twenty cigarettes per package in the port of destination in the Commonwealth, if such beverages and cigarettes were purchased from a duty free retail concession at the port of embarkation in the Commonwealth. All but ten packages of twenty cigarettes per package must comply with the Cigarette Labeling and Advertising Act as provided in 70-10.1-050(k).~~

~~(b) Passengers and crew members bringing alcoholic beverages and cigarettes in excess of the amount authorized in this section shall be assessed an excise tax in accordance with chapter 4, division 1, of title 4 of the Commonwealth Code.~~

#### 70-10.1-165 Liquid Fuel Tax

(a) For the privilege of first selling or distributing liquid fuel in the Commonwealth, there is imposed an excise tax ~~at in the amount of 15 cents per gallon~~ the applicable rate imposed under 4 CMC 1403(a).

(b) By written application, the Secretary may waive or reduce the liquid fuel tax imposed under 1403(a), on the sale of diesel fuel for use in a vessels commercial use for operations that are primarily outside the territorial waters of the Commonwealth.

(c) For purposes of 1403(c) of 4 CMC, division 1, the liquid fuel tax shall not apply to sales of liquid fuel to the Commonwealth Utilities Corporation for the purpose of power generation provided that Commonwealth Utilities Corporation complies with requirements of Public Law 10-36 ~~4 CMC 8141(b)~~, as determined by the Public Auditor; in the event that the tax has been included in the liquid fuel sold to Commonwealth Utilities Corporation upon written application the Secretary or his designee may credit the tax in the amount paid to the utility.

#### 70-10.1-170 Aviation Fuel Tax

(a) For the privilege of first selling or distributing aviation gas or other aviation fuel in the Commonwealth, there is imposed an excise tax at the rate of three percent ad valorem.

(b) By written application, the Secretary may waive or reduce the fuel tax imposed under 4 CMC 1403(b) where the price of aviation fuel without the aviation fuel tax would be more competitive than the price of aviation fuel elsewhere and the airline would purchase the aviation fuel in the Commonwealth.

**70-10.1-175 Beverage Container Tax**

- (a) A tax of five cents per container is imposed on all soft drink beverage containers; the exemption under 4 CMC 1402(ed)(1) ~~applies~~ may apply to this tax.
- (b) A tax of five cents per container is imposed on each alcoholic beverage container; the exemptions ~~applies to containers exempt~~ under 4 CMC 1402(e)-(d)(4)-(6), (5), and (6) may apply to this tax.

**70-10.1-180 Environmental Beautification Tax**

(a) Under 4 CMC 1411, a tax at the rate of .42 percent ad valorem is assessed on all consumer goods as defined in 4 CMC 1401(f). However, the tax assessed under 4 CMC 1411 shall not apply items exempted under 4 CMC 1402(c)(2)-(4) and 4 CMC 1402(d).

(b+) Examples.

(1) Example No. 1: John Doe, a resident, not a new or returning resident imports an automobile into the Commonwealth for personal use having a value of \$24,000. Mr. Doe will be subject to the excise tax under 4 CMC 1402(a)(12) and Environmental Beautification Tax under 4 CMC 1411. The taxes are calculated as follows:

Vehicle Value:	\$24,000.00
Exemption of \$1,000.00 per 1402(c)(1):	(\$1,000.00)
Tax Base:	\$23,000.00
Excise Tax at 5%:	\$1,150.00 (\$23,000.00 x 5%)
Environmental Beautification Tax at .42%:	\$96.60 (\$23,000 x .42%)
Total Tax:	\$1,246.60 (\$1,150.00 + \$96.60)

(2) Example No. 2: Mahi Fishing imports a boat into the Commonwealth for business purposes having a value of \$54,000. Mahi Fishing will be subject to the excise tax under 4 CMC 1402(a)(21) and Environmental Beautification Tax under 4 CMC 1411. The taxes are calculated as follows:

Boat Value:	\$54,000.00
Tax Base:	\$54,000.00
Excise tax at 5%:	\$2,700.00 (\$54,000.00 x 5%)
Environmental Beautification Tax at .42%:	\$226.80 (\$54,000 x .42%)
Total Tax:	\$2,926.80 (\$2,700.00 + \$226.80)

**Part 200 - Customs Entry Procedures; Freight/Cargo**

**70-10.1-201 Freight; Entry and Declaration of Imports**

(a) Entry of Imports - Requirement and Time. Except as otherwise provided, the consignee of imported merchandise shall make entry as provided by subsection (b) of the imported merchandise either in person or by an agent authorized by him at the Division of Customs Service within seven calendar days after the entry of the importing carrier.

(b) Entry Documents.

(1) Entry shall be made upon presentation to a customs agent of a nonnegotiable copy of the bill of lading or non-vessel operating common carriers freight bill or bill of lading, and vendor's invoices covering all merchandise arriving on one carrier and consigned to a consignee. If proper documents are not available within seven calendar days after the arrival of the merchandise, the estimated tax shall be paid using the fair retail value in the Commonwealth for such commodities subject to adjustment when the documents arrive, provided that the invoice documents are submitted no later than thirty days from the date of arrival. If the invoice actual documents are not submitted within the thirty from the date of arrival, any tax refund due to late adjustment may be forfeited under 4 CMC 1409(a). However, no release shall be authorized if the consignee has a prior unpaid tax, fee, or charge.

(2) In addition to providing a copy of the nonnegotiable copy of the bill of lading or non-vessel operating common carriers freight bill or bill of lading, and vendors invoices, each importer or consignee shall sign an entry certificate stating under penalties of perjury that the vendors invoices are true and correct and that no alterations or changes

have been made thereto. The entry certificate shall be obtained from a customs agent and signed at the time of entry.

**70-10.1-205 ~~70-10.1-205~~ Freight; Arrival of Cargo By**

(a) In General. Cargo shall be retained at the place of unloading until permission is given by a customs agent for its release. Any cargo not released shall remain in the physical possession of the terminal operator or the operator of the carrier at the expense of the consignee but under technical customs custody until entry is made and the tax paid, or otherwise directed by customs. The appropriate action taken shall be indicated either on the container of the merchandise or on the bill of lading, or NVOCC's freight bill or bill of lading.

HOLD  PASS	CONDITIONAL	RELEASE
ORDER OF CUSTOMS COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS		
_____ Agent	_____ Badge No.	_____ Date

(b) Release Procedure.

(1) Pass. If cargo is to be released to the consignee, the inspector shall circle or mark the word PASS and put his initials, badge number, and the date.

(2) Hold. If the cargo is to be retained, the word HOLD shall be circled or marked and the initials and the badge number of the agent and the date will be indicated.

(3) Conditional Release.

(i) Seaport. At the seaport, items may be conditionally released by a customs inspector to allow the items to be removed from the container yard to the ~~consignees~~ consignee's premises; however, such items may not be opened until final clearance by a customs agent.

(ii) Airport. At the airport, items may be conditionally released by a customs inspector to a consolidator; however, such items may not be released to the consignee until final clearance by a customs agent.

(iii) Partial Release. A partial release of cargo may be authorized by a customs officer making the following notation on the bill of lading or NVOCC's freight bill and by initialing each line item to be released. Items not initialed shall not be released.

The merchandise identified by my initials on each line of this bill of lading may be released to the consignee.

\_\_\_\_\_  
Date                      Customs Agent

(iv) Inspections, clearance, and other services provided by the Division of Custom Services may be made without any charge to the consignee, agent, postal services, or operator of the carrier from 0730 hour to 1630 hour, Monday to Friday, except holidays, or any other time frame set by the Division of Customs. For assessment and payment of taxes and inspection and release of merchandise at any other time, individuals requiring such service must be assessed a customs service charge pursuant to the provisions of 70-10.1-710 or 70-10.1-715, as applicable, of this subchapter or charged by agreement with Customs Services.

**70-10.1-210 Release of Perishable Merchandise**

The customs agent is authorized to permit the release and delivery, prior to formal entry thereof, of perishable articles, and other merchandise, the immediate delivery of which is considered necessary, such as where adequate holding or storage facilities are not available. Such merchandise shall remain under technical customs custody and no disposition of such merchandise by the consignee is authorized until a formal entry is made, and the tax paid, if required.

**70-10.1-215 Release of Merchandise Without Customs Clearance**

No carrier, agent, or terminal operator shall release or turn over to a consignee any merchandise or parcel without the prior approval of Customs. In the event a release was made by the carrier, agent, or terminal operator without prior clearance of Customs and the tax on the merchandise released cannot be paid by the consignee, the tax liability plus the penalty and interest imposed by division 1 of title 4 of the Commonwealth Code shall become the liability of the carrier, agent, or terminal operator and shall continue to accumulate such penalty and interest until the tax liability is paid in full. The Service shall notify the carrier, agent, or terminal operator of the ~~consignees~~ consignee's inability to pay and the determination of the Service to transfer such liability from the consignee to the carrier, agent, or terminal operator.

**Part 300 - Customs Entry Procedures; Masters**

**70-10.1-301 Masters Responsibilities; Arrivals**

(a) In General.

(1) Document Delivery.

(i) Immediately upon arrival, the master of a vessel or aircraft shall deliver to the customs agent one copy of the following:

(A) Passenger and cargo manifests;

(B) Bills of lading or NVOCCs freight bills or bills of lading and general declaration;

(C) A true and correct copy of any correction of such manifests, bills of lading, and/or NVOCCs freight bills; and

(D) A general declaration filed on entry of his vessel or aircraft.

(ii) If the master is aware of any error in the manifests, bills of lading, NVOCCs freight bills, or general declaration and does not make correction, he shall be guilty of perjury and shall also be subject to the penalty of subsection (a)(7) of this section. All fines and penalties assessed under this part 300 are to be paid in U.S. dollars.

(2) The master and his vessel or aircraft, passengers and cargo aboard such vessel or aircraft may be denied customs clearance, at the discretion of the Customs Service, if the documents referenced in subsection (a)(1) above are not presented to the Service upon arrival. Clearance may be granted provided the penalty of subsection (a)(7) of this subsection is agreed upon by the master of the vessel or aircraft. The penalty is subject to collection when the actual assessment is made by the Service.

(3) Advance copies of manifests and bills of lading required in subsection (a)(1) above may be submitted to the Service; however, the official manifests and bills of lading shall be presented at the time of arrival. The Service will accept manifests and bills of lading only at the time of arrival of the carrier.

(4) Passenger and Cargo Manifests. Vessels arriving in the Commonwealth from more than one port of departure shall deliver to the Service, immediately upon arrival, separate passenger and cargo manifests for all passengers and cargo boarded at each port of departure, regardless of whether passengers or cargo were boarded at any one particular port in the travel itinerary of the carrier.

(5) Transiting. Passengers and cargo transiting on the same flight or voyage arriving in the Commonwealth must be clearly identified on the manifest by indicating in parenthesis the point of final destination immediately after the passengers name or the consignee of the cargo.

(6) Terminating. Passengers on a flight or a voyage which terminates in the Commonwealth and are discharged in the Commonwealth for the purposes of immediate connection on another flight or voyage for points outside of the Commonwealth shall be reported to the Customs Service, immediately upon arrival of the carrier, in one of the following methods:

(i) File a separate manifest for each port of final destination of such passengers; or

(ii) Identify on the manifest such passengers by enclosing in parenthesis the point of final destination and the connecting flight or voyage number immediately after the names of the passengers.

(7) For each and every violation of subsections (1), (4), (5), or (6) of this subsection (a), a penalty is imposed in the amount of the greater of five hundred dollars for each violation or one hundred dollars per hour or a fraction of an hour for each and every violation from the time of arrival until the appropriate documents are presented to the Service.

(8) All cargo, including ships stores and operators pouch mail or cargo, or U.S. mail, carried on the vessel or aircraft entering the Commonwealth must be included in the manifests and related bills of lading. Willful failure to so include such cargo or mail or the presentation of a willfully falsified manifest shall be deemed to be a violation of this subchapter and is subject to the penalty provisions of subsection (a)(7) of this section, and/or a penalty of fifty dollars for each line item not so included in the manifest.

(9) All passengers and crew members baggage must be transported directly from the carrier to the arrival area at the port. All cargo not part of any passengers or crew members baggage must be transported directly from the carrier to the warehouse or place designated as the cargo storage area of the carrier.

(10) Upon arrival at the airport, all passenger exit doors, cargo compartment doors, and galley service doors of the aircraft shall remain closed. At the request of the Service, only one passenger exit door may be opened for the purpose of clearing the flight. All other doors may be opened for disembarkation of passengers and cargo only at the approval of the Service.

(11) Upon arrival at the pier, no passenger or crew members may disembark, nor may cargo be unloaded until approval to do so is granted by the Service.

(b) Sealing of Stores. Upon the arrival of a vessel from a port outside of the Commonwealth, or a vessel engaged in the foreign trade from a port within the Commonwealth, sea stores and ships stores not required for immediate use or for the delivery of goods to be consumed on board while the vessel is in port and articles acquired abroad by officers and members of the crew for which no permit to land has been issued, shall be placed under seal, unless the customs agent is of the opinion that the circumstances do not require such action. Customs agents in charge of the vessel, from time to time, as in their judgment and necessity requires, may issue stores from under seal for consumption on board the vessel by its passengers and crew.

(c) Boarding of Vessels and Aircraft. The customs agent may board and examine any vessel or aircraft arriving in the Commonwealth when it is necessary to carry out the provisions of applicable laws of the Commonwealth, or any rule or regulation promulgated thereunder and require the master or captain thereof to exhibit for examination by the customs agent the manifest or any documents or papers, or any trunk, package or cargo on board, or any compartment, storage area, cabin, galley, cockpit, lavatory, or any section of the vessel or aircraft. The master or captain of the carrier shall ensure the safety of the customs employees from the time of boarding the vessel or aircraft until such employees disembark.

#### **70-10.1-305 Masters Responsibilities; Departure**

(a) Delivery of Documents. Prior to departure, the master of a vessel or aircraft shall deliver to the customs agent the following documents:

(1) One copy of the general declaration for the port of destination; and

(2) One copy of passenger and cargo manifests for the port of destination; and

(3) If the flight or voyage has intermediate stops before reaching its final destination, one copy of the passenger and cargo manifests for each intermediate port.

(b) Official Customs Clearance Certificate. All vessels and aircraft destined for ports outside of the Commonwealth must obtain an official customs clearance certificate prior to departure. A customs clearance certificate must be requested at least twelve hours prior to expected departure.

(c) Violation. Vessels and aircraft not complying with this subsection may be denied future customs clearance upon arrival in the Commonwealth and may be subject to either one of the following penalties:

(1) The vessel or aircraft and all passengers, crew members and cargo on board may be returned to the point of origin or other port outside of the Commonwealth; or

(2) The master, owner or operator of the vessel or aircraft may pay a fine of one thousand dollars per violation.

(d) Private Aircraft and Pleasure Vessels. The requirements of subsection (a) shall not apply to private aircraft and pleasure vessels.

(e) Domestic. Strictly domestic flights or voyages may be exempted from the requirement of this section.

#### **Part 400 - Customs Entry Procedures; Passengers and Crew Members**

##### **70-10.1-401 Passengers and Crew Members Destination and Disembarkation**

(a) Terminating Passengers and Crew Members. Upon arrival at the destination and upon approval to disembark, all passengers and terminating crew members must proceed directly from the carrier to the arrival area at the terminal, by way of passage designated for use by arriving passengers and crew members to gain access to the immigration inspection area and to the customs inspection area.

(b) Transit Passengers and Crew Members. Subject to Commonwealth Ports Authority (CPA) and the Federal Aviation Administration (FAA) regulations, all passengers and crew members transiting in the Commonwealth to points outside of the Commonwealth are permitted to:

(1) Remain on board;

(2) Disembark and proceed directly to the designated area at the terminal area for embarking passengers for re-boarding; or

(3) Disembark and proceed with terminating passengers to the customs inspection area and go through customs formalities which authorize them access to other facilities at the port.

(c) Transfer of Passengers and Crew Members Baggage and Hand Carried Articles. Subject to CPA and FAA regulations, passengers and crew members baggage and hand carried articles on international travel arriving in the

Commonwealth and requiring immediate connection aboard another carrier to points outside of the Commonwealth may be waived customs inspections provided such baggage and hand carried articles are transferred to the connecting aircraft or vessel by the owner, agent, or operator of the carrier that brought such passengers and crew members baggage and under the supervision of the Customs Service.

(d) Northern Islands Destination. Carriers, crew members, passengers, baggage and cargo on international travel, as defined in this subchapter, destined for any islands north of Saipan are required to go through Customs Service inspection and clearance at the authorized and designated ports of entry, before continuing on the journey. After customs clearance in Saipan, the flight or voyage is classified domestic travel.

(e) International Travelers Boarding Domestic Flight or Voyage. All passengers and crew members, including their baggage and hand-carried parcels, in international travel, aboard a carrier destined to another point in the Commonwealth with a stop-over in Saipan, Rota, or Tinian are required to undergo customs inspection and clearance immediately upon arrival at the first port of entry in the Commonwealth in order to board any carrier cruising or flying a domestic itinerary. The first port of entry arrived at in the Commonwealth by passengers and crew members is considered the port of destination for such passengers and crew members.

#### **70-10.1-405 Passengers and Crew Members; Customs Entry and Declaration**

(a) Customs Entry Form - Requirement.

(1) All passengers and crew members regardless of citizenship must make a customs entry and declaration, customs entry and declaration, form CS-1350, upon arrival in the Commonwealth.

(2) All articles or merchandise acquired abroad and their value (price actually paid for or, if not purchased, fair retail value in the Commonwealth) must be declared in writing.

(3) Written declarations must be signed and presented to the customs agent on duty before examination pursuant to the inspection requirements of part 500 of this subchapter.

(4) All information furnished by passengers, whether orally or in writing, shall be testimony provided under oath and subject to all applicable penalties including 70-10.1-801(a).

(5) No passenger or crew member required by this section to make a customs entry and declaration may be cleared by a customs agent without completing the required form.

(6) To facilitate inspection, the prescribed form for making customs entry and declaration may be printed in foreign languages in addition to English. However, all prescribed customs entry and declaration forms in foreign languages must be completed by the passengers and crew members in Roman characters only.

(7) Individuals unable to read or write are required to seek the assistance of an agent of the carrier in making a customs entry and declaration. Individuals unable to write may sign the prescribed customs entry and declaration form with an X mark, witnessed by a customs agent.

(b) Children Under 12 -- Accompanied. Children under age of 12 traveling with friends or relatives may be claimed as immediate family members of the relatives or friends. The full name of the children must be written on the customs entry and declaration.

(c) Children Under 12 - Unaccompanied. Unaccompanied children under the age of 12 are required to make a customs entry and declaration. An agent of the carrier shall render necessary assistance to minor children in making a customs entry and declaration.

(d) Domestic Travelers. Passengers boarding international flights or voyages from Tinian or Rota destined for Saipan or vice versa, are not required to make a customs entry and declaration. Such passengers would be required to obtain customs departure clearance at the point of embarkation.

(e) Family Customs Entry and Declaration. A single customs entry and declaration, form CS-1350, may be filed with the customs officer upon arrival for immediate family members if traveling together. For purposes of this section, immediate family members are limited only to husband, wife, sons and daughters. Parents, brothers, sisters, grandparents, grandchildren, nephew, nieces, uncles, aunts, married daughters, married sons, and all other persons are not considered immediate family members for purposes of this subsection and, therefore, must make a separate customs entry and declaration.

(f) In Transit. All passengers and crew members on international travel boarding domestic carriers for continuation of their travel to other points in the Commonwealth must make a customs entry and declaration at the first port of entry in the Commonwealth.

(g) Terminating Crew Members. ~~Terminating crew members who will be in the Commonwealth for the purpose of boarding a subsequent flight or voyage departing the Commonwealth within two hours after their arrival are not required to file a customs entry and declaration, form CS-1350 when entering the Commonwealth, if the crew member does not have in his or her possession at the time of arrival dutiable goods, contraband, or agricultural commodities. (Add, when entering the commonwealth.~~

#### 70-10.1-410 Carriers Duty to Supply Customs Entry and Declaration

- (a) The customs entry and declaration form, a form prescribed by the Division of Customs Service and approved by the Director, shall be furnished to all carriers. The carriers shall print the forms, following the format and specifications established by the Division of Customs Service, and furnish them to their passengers for use upon arrival in the Commonwealth.
- (b) It shall be the responsibility of the carriers to publish and maintain an adequate supply of the customs entry and declaration forms, without any cost to the passengers or the government of the Commonwealth.
- (c) The logo and other notations of the carrier may be printed on the form provided that such logo and notations comply with the specifications of the Division of Customs.

#### 70-10.1-415 Prohibited Access

Transit passengers and crew members are prohibited access to areas at the port other than those designated for transit passengers and crew members. Transit passengers and crew members are strictly prohibited from leaving the airport or wharf compound for any length of time prior to their departure from the Commonwealth without going through customs formalities.

### Part 500 - Customs Inspection Procedures

#### 70-10.1-501

[Reserved.]

#### 70-10.1-505 Inspection of Passengers and Other Individuals -

- (a) International Flights. All individuals as well as their baggage and hand carried articles in international travel regardless of their point of embarkation, shall be inspected by the Service prior to leaving or being taken away from the port of entry. Passengers clearing customs and leaving the inspection area without their belongings shall be authorized to make a declaration and obtain customs inspection and clearance only after the processing of international passengers.
- (b) International Transit. Those individuals who may be inspected under subsection (a) include all individuals on domestic travel, as defined, who enter or pass through customs jurisdiction at the ports during the process of clearing international travelers, are required to go through all customs formalities except the requirements of filing a customs entry and declaration.
- (c) Violations of Law. The customs agent may inspect without warrant any person arriving in the Commonwealth to determine whether such person is violating the Controlled Substances Act, the Weapons Control Act, the Anti-drug Abuse Act of 1991 and/or other laws and regulations enforced at the ports of entry. A strip search may be performed if there is real or reasonable suspicion supported by objective and articulable facts that the passenger is concealing evidence of a crime or contraband upon his person. A customs agent may perform a body cavity search (intrude into a body cavity) if there is a clear indication or plain suggestion that there is contraband concealed within the body of the individual.
- (d) Secured~~ity~~ Areas.
  - (1) Any person who ~~voluntarily~~ enters a secured ~~ity~~ area at the airport, ~~or wharf, a bonded warehouse, or ports of entry in the Commonwealth~~ is subject to customs inspection as provided for in this part 500.
  - (2) Prospective passengers who enter a secured~~ity~~ area at the airport or wharf ~~that do not depart and later decide not to leave~~ are required to go through customs inspection and clearance in the same manner as ~~an~~ arriving passengers ~~on traveling internationally~~ international travel.
- (e) Foreign Diplomats. An inspection of a foreign diplomat may be waived if the diplomat is travelling on official diplomatic business with a valid and proper U.S. visa for entry into Commonwealth of any foreign country on official travel with a valid and proper U.S. visa for entering the Commonwealth.

#### 70-10.1-510 Inspection of Baggage

A customs agent may inspect without warrant the baggage and hand carried parcels of persons arriving in the Commonwealth in order to ascertain what articles are contained therein and whether the articles are taxable, prohibited, or restricted.

#### 70-10.1-515 Inspection of Cargo



The customs agent may inspect without warrant any cargo, package, receptacle, aircraft and vessel arriving in the Commonwealth, and may seize prohibited or restricted articles or merchandise including narcotics and other items of contraband.

**70-10.1-520 Postal Inspection**

(a) Pursuant to applicable U.S. Postal Service Regulations and/or memorandum agreement between U.S. Postal Service and the Commonwealth, mail and parcels arriving at the post office may be inspected by the Customs Service in order to detect goods, merchandise, or other commodities and to assess excise taxes; and to detect and intercept contraband; and to enforce other laws and regulations enforced at the ports of entry.

(b) Customs Service will request addressees of mail or their designated representatives to open their mail and parcels for inspection.

**70-10.1-525 Crew Members with Baggage**

All crew members who have baggage and/or hand carried parcels must go through customs inspections with all their baggage and hand carried parcels.

**70-10.1-530 Penalty**

The master of a carrier, other crew members, operator of the carrier or its agent, and all individuals who willfully aid any other individuals to conceal any item brought on board with the intention to violate any of the laws of the Commonwealth or the United States of America, may be punished by a fine and/or imprisonment equal to the maximum penalty provided by the law which the individual(s) intended to violate.

**70-10.1-535 High Risk Area**

(a) The Director shall have the authority to classify any place or port in any country or territory as a high risk area in order to ensure effective enforcement of chapter 4, division 1, of 4 CMC, the Controlled Substance Act, the Weapons Control Act, the Anti-Drug Enforcement Act of 1991, and other laws and regulations enforced at the ports of entry.

(b) Passengers and crew members, including their baggage and hand carried parcels, and all cargo from areas classified high risk shall undergo thorough inspections and examinations whenever appropriate.

(c) ~~All cargo from high risk areas shall be inspected and cleared only in the presence of the consignee or his authorized agent.~~ All cargo from high risk areas may be inspected with or without the presence of the consignee or his authorized agent.

(d) Perishable commodities from high risk areas may be imported into the Commonwealth if the consignee of such commodities agrees to make entry and claim the cargo immediately upon arrival in the Commonwealth. Perishable commodities from high risk areas which are not claimed immediately upon arrival in the Commonwealth shall not be inspected and/or released until they are claimed. ~~The carrier, its authorized agent, terminal operator, and the Service shall not be liable for spoilage or damage to perishable merchandise resulting from the consignee's failure to make entry and claim the cargo immediately upon arrival.~~

**70-10.1-540 Confiscation of Merchandise**

(a) Merchandise - Prohibited. Pursuant to -1412(c) of 4 CMC and 2150 of 6 CMC prohibited or restricted merchandise imported into the Commonwealth and found during inspection shall be confiscated by the Service and turned over to an appropriate Commonwealth government agency within a reasonable time for proper disposition.

(b) Merchandise - Non-payment of Tax. Merchandise on which the tax is not collected shall also be confiscated. Merchandise confiscated by the Service due to nonpayment of tax must be claimed and the tax paid by the owner or consignee within ten days from the date the merchandise was confiscated.

**70-10.1-545 Unclaimed Baggage**

(a) Unclaimed Baggage. Passenger or crew members baggage not claimed at the customs inspection area shall be retained by the carrier and secured in a safe place within the inspection area at the port. Unclaimed baggage which is required to be stored in another location due to inadequate storage facilities within the inspection area at the port may be transferred by an authorized representative of the carrier liable for the security of the unclaimed baggage; provided, however, the representative of the carrier obtains the approval of the Customs Service and the shipper accepts the condition that spoilage and/or damage to the cargo is the liability of the shipper. Cargo released to the carrier or terminal operator for storage and/or security shall not be opened by the carrier or terminal operator. The Customs Service shall have the right to take into custody any part of or all unclaimed baggage when such officer has

probable cause to believe that the baggage contains dutiable, prohibited, or restricted merchandise. The Customs Service may open and inspect such baggage in the presence of a representative of the carrier, even if the passenger or crew member is not present.

(b) Storage Charge.

(1) Unclaimed baggage not properly stored by the carrier liable for the security of the same may be taken into custody, and shall be released to the carrier only upon the carriers payment to the Service of a storage charge of five dollars per day or a fraction of a day, for each piece stored. Unclaimed baggage in the custody of the Service may be claimed by the carrier during regular working hours only, from 0730 hours to 1130 hours and from 1230 hours to 1630 hours, Monday through Friday. Passengers or crew members shall not be authorized to claim any unclaimed baggage in the custody of the Service, except as provided in subsection (b)(2) of this section. The Service shall not be liable for damages to the container or damages to and/or loss of the contents.

(2) Unclaimed baggage in the custody of the carrier may be released to the passenger or crew member only after inspection and clearance by the customs agent.

(3) Unclaimed baggage in the custody of the carrier, or the Service, which is not claimed within ten days, shall be opened and inspected by a customs agent and released to the carrier for storage at another location, provided the storage charge in subsection (b)(1) of this section is paid.

**Part 600 - Customs Procedures; Confiscated and Unclaimed Merchandise**

**70-10.1-601 Unclaimed Merchandise**

Merchandise confiscated by the Service due to nonpayment of the tax due may be sold at auction if no claim was made pursuant to 70-10.1-540(b) of this subchapter, provided, however, that:

(a) The Service notified the owner or consignee in writing that the provisions of 70-10.1-540(b) of this subchapter for making a claim expired and the owner or consignee was given an additional ten days to claim the merchandise and pay the tax due plus related penalty and interest;

(b) If the merchandise was not claimed and the tax liability not paid at the end of the period allowed in subsection (a) of this section, the Service shall send a final written notice to the owner or consignee of the merchandise advising that the merchandise will be sold at auction if not claimed in ten days commencing from the date of the final written notice;

(c) After the expiration of the final notice, if the merchandise is still unclaimed and the tax liability unpaid, the owner or consignee shall not be allowed to claim the merchandise once the merchandise has been processed and advertised for auction.

**70-10.1-605 Auction**

The Service shall advertise to the public in a local newspaper once per week for three consecutive ~~weeks, that~~ weeks ~~that~~ merchandise on which excise taxes remain unpaid will be sold at auction. Proceeds from the sale shall be distributed and applied as follows:

(a) To reimburse the Service for advertising, storage and other related expenses.

(b) To pay the excise tax liability.

(c) To pay applicable penalty and interest charges imposed by law and this subchapter.

(d) To pay part, or all of any other outstanding tax liabilities, fees, penalties, or interest.

(e) To pay the owner or consignee any amount remaining which is over five dollars. Amounts of five dollars or less may be paid to the owner or consignee only upon written request by the owner or consignee.

**Part 700 - Request for Customs Service; CIQ Overtime Charges**

**70-10.1-701 Request Cancellation, Delay and Charges**

(a) Request Requirement. All air and sea carriers and other persons whose operations require the service of customs agent of the Commonwealth are required to make a request for such service. The request must be made on a form prescribed by the Customs Service.

(b) Blanket Request. All carriers and other persons operating on a planned schedule must make a request to the Customs Service at least thirty days before the effective date of their schedule of operation. A single request will be sufficient for the duration of one set of schedules. Any unforeseen changes in a set of schedules require a special request to the Service at least twenty-four hours before the occurrence of such changes. If such change is to occur during weekends and holidays, the request must be made twenty-four hours in advance of the last normal working day. All carriers and other individuals making a permanent change in their schedule are required to submit a new blanket request at least thirty days before the effective date of the new schedule.

(c) Special Request. All carriers and other persons operating unscheduled flights or operating a charter, technical stop, or extra flight or voyage are required to make a special request at least twenty-four hours in advance of the last normal working day before arrival. All sea carriers are required to submit a special request for customs clearance.

**70-10.1-705 Failure to Make Request**

When a carrier, its master, operator, owner, or authorized agent fails to make a request as required by 70-10.1-701, upon arrival of such carrier, one or all of the following shall apply:

(a) During the normal working hours, the Service will arrange for clearance based on the availability of personnel and the number of blanket and special requests for the day. If customs service cannot be rendered during normal working hours, clearance will be furnished after regular working hours provided the carrier agrees and pays customs charges as provided for in 70-10.1-710 of this subchapter prior to rendering such service, or by agreement with Customs Service.

(b) All vessels, including pleasure boats, on international travel arriving after regular working hours are prohibited to anchor at the pier until cleared by the Service. They must remain out in the harbor until the next regular working day except for emergencies as determined by the Customs Service. While anchored out in the harbor, crew members, and passengers are prohibited from disembarking. All baggage and cargo are prohibited from unloading or removal from the vessel until cleared by the Service.

(c) Air carriers arriving after normal working hours may be denied customs clearance unless adequate customs personnel are readily available and the carriers pay the necessary customs overtime charge. Passengers and crew members including their baggage and hand carried articles and all cargo on board are prohibited to disembark or to be unloaded until cleared by the Service.

(d) Cancellation and/or Delay of Arrivals. The operator of a carrier or its agent shall notify the Service of all the cancellations and/or delays of arrivals at least four hours before the end of a normal working day concerning the initial schedule of the arrival being canceled or delayed. In the absence or delay of such notification, the charge to be imposed shall be in accordance with 70-10.1-710 or 70-10.1-715, as applicable, of this subchapter, or by agreement with Customs Service.

**70-10.1-710**

[Reserved.]

**70-10.1-715**

[Reserved.]

**70-10.1-720 Customs, ~~Immigration~~ and Quarantine (CIQ) Charges**

(a)(1) General Rule for Charges After Normal Working Hours. For purposes of application, a standard rate in lieu of overtime charges of the Customs Division will be included and billed using a flat rate that also includes the overtime charges of the ~~Immigration and Quarantine~~ Divisions. This rate will be applied to the following flight particulars for work performed after normal working hours:

(i) Per flight over 20 tons gross weight \$ 35.00

(ii) Per flight under 20 tons gross weight \$ 17.50

(iii) Per arriving passenger for planes  
over 20 tons gross weight \$ ~~1.00~~7.00

(iv) Per arriving passenger for planes  
under 20 tons gross weight \$ ~~.50~~7.00

(v) Per cargo lb. \$ .035

(2) After normal working hours is work performed:

(i) For flights and passengers:

(A) Weekdays - work performed between the hours of 4:30 p.m. through 7:30 a.m. the next day, Monday through Friday, excluding holidays.

(B) Holidays - work performed during the 24 hour period of a holiday.

(C) Weekends - work performed after 4:30 p.m. Friday through 7:30 a.m. Monday.

(ii) For cargo:

(A) Weekdays - cargo arriving between 4:30 p.m. through 8:00 p.m.

(B) Holidays - cargo arriving after 4:30 p.m. the day preceding a holiday up to 8:00 p.m. the day of the holiday.

1. If the holiday falls on Friday, the chargeable hours shall start after 4:30 p.m. Thursday and continue through 8:00 p.m. Sunday.
  2. If the holiday falls on a Monday, the weekend chargeable hours shall continue through the weekend up to 8:00 p.m. Monday.
- (C) Weekends - cargo arriving after 4:30 p.m. Friday up to 8:00 p.m. Sunday.
- (D) No service - no cargo service will be provided from 8:00 p.m. through 7:30 a.m. the following morning.
- (b) Application of Overtime Pay. All air and sea carriers and other persons whose operations require the service of a customs agent of the Commonwealth government of the Northern Mariana Islands after normal working hours shall be charged with the overtime pay of the customs agent(s) rendering the service as follows:
- (1) Unscheduled flights and any arrival at the seaport. Service of less than two hours for each arrival shall be charged with the minimum of two hours overtime. Any fraction of an hour in excess of the two hours minimum is charged a full hour. The charge shall commence upon arrival of the customs officer(s) at the post of duty.
  - (2) Sea carriers, individuals, non-scheduled aircraft and others for which overtime services can be specifically assigned shall be charged for the actual overtime incurred by the customs, ~~immigration or~~ quarantine agent(s) providing such services. There shall be a minimum two hour charge as provided in subsection (b)(1).
  - (3) Said overtime charges and holiday charges shall be waived when services are rendered to a carrier operating under emergency conditions or for emergency purposes.
- (c) Cargo Originating Outside of the CNMI. All cargo which originates outside of the CNMI and which is being transported from the first point of entry in the CNMI shall be inspected at the final point of entry. All cargo inspections, regardless of the location of the inspection shall be subject to the C+Q rules of this section.

#### **Part 800 - Administrative**

##### **70-10.1-801 Production of Records of Taxpayers Pursuant to CNMI Tax Laws**

- (a) For the purposes of ascertaining the correctness of any declaration, determining the liability of any person in respect of any tax or fee, or collection of any such liability, the Director or his delegate is authorized to:
- (1) Examination of Records. Examine or request any books, papers, records, substantiating documents, and other data with or without the taxpayers consent from any person which may be relevant or material to such inquiry. The required records shall be made available not later than thirty days beginning with the date when the request is received;
  - (2) Summons. Summon the person liable for the tax or fee, or the person required to perform the act, or any officer or employee of such person or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for the tax or the fee, or the person required to perform the act, or any other person the Director or his designee may deem proper to appear before the Director or his delegate at the time and place named in the summons and to produce such books, papers, records, substantiating documents, and other data, and to give such testimony, under oath, as may be relevant or material to such inquiry;
  - (3) Testimony. Take such testimony of the person concerned under oath, as may be relevant or material to such inquiry.
- (b) English Requirement. All invoices accompanying merchandise subject to the provisions of chapter 4, division 1, of title 4 of the Commonwealth Code shall be written in English and prepared prior to arrival in the CNMI and presentation to custom officials.

##### **70-10.1-805 Record Maintenance**

All books and records of all business transactions necessary to determine fees and taxes imposed by the Commonwealth government under chapter 4, division 1, of title 4 of the Commonwealth Code are to be maintained within the Commonwealth at the central office of the business operation and shall be made available for examination not later than thirty days beginning with the date when the request is received. Accurate records of all business transactions necessary to determine taxes and fees must be maintained for a minimum of three years after the date of such transaction.

##### **70-10.1-810 Time for Performance of Acts Where Last Day Falls on Saturday, Sunday, or Legal Holiday**

When the last day prescribed under authority of chapter 4, division 1, of title 4 of the Commonwealth Code for performing any act falls on Saturday, Sunday, a legal holiday, or days authorized by the Governor for government offices to be closed, the performance of such act shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday, a legal holiday, or a day authorized by the Governor for government offices to be closed. For purposes of this section, the last day for the performance of any act shall be determined by including any authorized extension of time. The term legal holiday means a legal holiday in the Commonwealth.

#### **70-10.1-815 Oaths**

The customs supervisor and all other authorized customs agents are empowered to administer any oaths required or authorized by this subchapter in respect of any matter coming before such officers in the performance of their official duties. No compensation or fee shall be demanded or accepted for administering any oaths under the provisions of this section.

#### **70-10.1-820 Payments**

All taxes, fees, and charges, except where other provisions of this subchapter govern, shall immediately become due and must be paid in cash, or by U.S. postal money order, or check drawn at a bank in the Commonwealth, or a bank in any of the states in the United States of America. Any check returned by the bank due to insufficient funds or any other reason must be replaced by either cash, U.S. postal money order, or certified check. Any tax, fee, or charge paid by a check and returned by the bank due to insufficient funds is construed to have not been paid when due and the owner or consignee shall be assessed penalties and interest, in addition to all charges arising as a result of the check being returned, including those charges authorized pursuant to 7 CMC 2442, and bank services charges for returned checks. The Division of Customs shall have the right to reject any or all personal checks and demand payment in the form of cash, U.S. postal money order, or certified checks.

#### **70-10.1-825 Spectators**

Only individuals directly associated with the enforcement of the laws of the Commonwealth or applicable laws of the federal government which are administered at the ports of entry in the Commonwealth, and individuals who provide maintenance and service of a carrier, and arriving passengers or arriving crew members shall be permitted entry into any area between the carrier and the customs inspection area including all ramps, aprons, gangplanks, escalators, elevators, stairways, walkways, and all passageways and lavatories accessible and used by arriving passengers and crew members; and all areas accessible and used by the operator of a carrier for transporting cargo from the carrier to the operators warehouse or storage facility, except to the extent that any area is also shared with enplaning passenger, crew members and other authorized airline personnel. Such enplaning passengers and authorized airline personnel shall not be deemed to be in violation of this subchapter in those shared areas. Unauthorized individuals found in any of these areas shall be deemed to be in violation of this subchapter and shall be punished accordingly.

#### **70-10.1-830 Bribery of Customs Officials or Employees**

If, upon investigation, it is determined that money or anything of value was given, offered, or promised to a customs agent or any other employee of the Division of Customs with the intent to control or influence such officer or employee in the performance of his official duties, the matter shall be referred to the Attorney General of the Commonwealth for prosecution as provided by law.

#### **70-10.1-835 Informers Name Confidential**

An informers name and address shall be kept confidential. No files or information concerning an informer shall be disclosed to unauthorized individuals. No information shall be revealed which might aid the offenders in identifying the informer.

#### ~~70-10.1-840 Pass Is Currently Issued by Commonwealth Ports Authority Ports Police~~

~~(a) A temporary pass may be issued to a non-passenger to enter the passenger/baggage inspection area at the ports for purposes of meeting official guest(s) of the Commonwealth, a disabled passenger, unaccompanied children under the age of six years, and other government dignitaries. A pass may be issued to employees of private companies if the presence of such employees in the arrival areas is necessary to the operation of the company. A detailed justification for all temporary passes must be submitted to the Division of Customs for review and approval. All temporary passes must be requested and approved by the Director or his delegate at least twelve hours before the arrival of a special passenger. All temporary passes issued must be returned to the Service upon leaving the passenger/baggage inspection area.~~

~~(b) A special pass is one that authorizes entry into the sterile area beyond the customs baggage area. Government employees may be issued special passes, only if such employees are required to be in the arrival areas in order to carry out their duties and responsibilities. Special passes are not required for law enforcement personnel whose presence in the sterile area are required to carry out their duties services, provided however that prior notification and approval by the Director or Supervisor in charge is provided. To qualify for a special pass, both the employee~~

and the employer must file together an application to the Division of Customs which satisfies the following requirements:

- (1) The employer must submit a copy of the determination made by the Service as specified in this section.
- (2) The employer must have a valid commonwealth airport authority security pass or port security pass and must be authorized to enter the aircraft operation areas at the airports or the port security compound at the wharf.
- (3) A ten dollar processing fee plus two color pictures, 1 1/8 x 1 1/8, must accompany the application. Polaroid pictures are not acceptable. The processing fee is waived for government employees. However, lamination fee will be charged to the requesting departments operation account.
- (4) In addition to all requirements specified in the application form for a special pass, the employer must agree and accept the following conditions:

**CONDITIONS AND ACCEPTANCE**

Special Pass No. \_\_\_\_\_ issued on \_\_\_\_\_ to \_\_\_\_\_ (recipient on behalf of) \_\_\_\_\_ (employer/applicant) is the property of the Commonwealth government of the Northern Mariana Islands. The Division of Customs may at any time revise, revoke, and/or cancel the special pass which must be returned upon request. The special pass is to be used only in designated areas approved and indicated on the pass by the person to whom it was issued and only while on duty as an employee of the employer shown above.

In case of loss or theft, a loss charge of fifty dollars must be paid to the Division of Customs. The employer must report such loss or theft immediately to the Division of Customs, and the employer shall bear the expense of the loss. Failure to report the loss or theft will result in the cancellation of all special passes issued on behalf of the employer. A lost or stolen pass may be replaced provided another application together with ten dollars application fee plus the charge of fifty dollars is paid to the Division of Customs.

(e) Unlawful use of any pass issued by the Division of Customs shall be subject to the applicable penalties of these provisions.

**70-10.1-845 Penalties Imposed in Chapter 4, Division 1, 4 CMC**

- (a) Reasonable Cause Waiver. The Secretary has the authority to waive the civil penalties imposed under 4 CMC 1407(d), 1412(a), 1423, 1424, or this subchapter on the basis of reasonable cause.
- (b) 1412(a) Penalty Calculation. The penalty imposed under 4 CMC 1412(a) shall be equal to 100% of the value of the goods, commodities, resources, or merchandise but only to the extent of the value of such items which is under declared or undeclared, as applicable.

**70-10.1-850 Additional Penalties-**

- (a) Any person who knowingly shall swear to or verify under oath, any false or fraudulent statement with the intent to evade any tax imposed under chapter 4, division 1, of title 4 of the Commonwealth Code shall be guilty of a felony, punishable by a fine of not more than ten thousand dollars or imprisonment for not more than two years or both.
- (b) Any person who willfully intends to evade or otherwise violate this subchapter and any other regulations and procedures governing inspection and clearance of crew, passengers, baggage, cargo, or other goods, shall be guilty of a felony, punishable by a fine of not more than ten thousand dollars or imprisonment for not more than two years or both.
- (c) Any person who negligently fails to follow this subchapter or any other regulations and procedures governing the inspection and clearance of crew, passenger, baggage, cargo or other goods shall be subject to a civil penalty in an amount not to exceed two thousand dollars per violation.
- (d) Articles Held by Customs. Persons shall be liable for a fine of \$5.00 per day per article held by Customs for violation(s) of the Commonwealth Code or the Northern Marianas Administrative Code.

**Part 900 - Rules and Regulations Governing the Importation of Cut Fabric Panels into the CNMI**

**70-10.1-901 Authority**

The authority for the promulgation and issuance of this part is derived from the Commonwealth Code, including, but not limited to, the following sections: 1 CMC 2553; 1 CMC 2557; 4 CMC 1402(a)(21); 4 CMC 1402(b)(9); 4 CMC 1425; 4 CMC 1426; 4 CMC 1818.

Modified, 1 CMC 3806(b), (d), (f).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

Commission Comment: The Department of Finance promulgated this new part as part XI of the Customs Service Regulations. For consistency in the NMIAC, the Commission moved this part before part X, codified at part 1100.

PL 14-35 (effective Oct. 12, 2004) repealed and reenacted 4 CMC 1103-1106, 4 CMC division 1, chapter 8 and 4 CMC division 1, chapter 9. PL 14-35 4 ( 1820), to be codified at 4 CMC 1820, grants the Secretary of Finance authority to prescribe adopt regulations issued under the U.S. Internal Revenue Code necessary for the proper administration and enforcement of Commonwealth tax laws. PL 14-35 4 ( 2001), to be codified at 4 CMC 1901, grants the Secretary of Finance broad authority to prescribe necessary rules and regulations to implement the CNMI tax laws.

#### **70-10.1-905 Purpose**

The purpose of this part is:

- (a) To assist, increase and continue the competitiveness of the CNMIs garment industry by encouraging the use of cut fabric in the local manufacturing process;
- (b) To facilitate compliance with United States Customs Headnote 3(a) requirements;
- (c) To reduce the amount of fabric waste generated by the garment industry; and
- (d) To ensure the integrity of the CNMI excise tax system by identifying fabric shipments which do not comply with United States Customs Headnote 3(a).

Modified, 1 CMC 3806(d).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

#### **70-10.1-910 Scope and Disclaimer**

The regulations in this part apply only to cut fabric shipments from a foreign country into the CNMI, where the fully assembled garment is intended to be shipped directly to the customs territory of the United States of America (U.S.).

At all times the final determination of clearance of garments in the U.S., assembled in the CNMI as manufactured in compliance with these regulations, will be determined by U.S. Customs. Compliance with these regulations does not ensure that the shipment will meet the criteria and specifications of Headnote 3(a), and at all times, the risk of non-clearance, or seizure of goods by U.S. Customs is on the garment company or buyer.

Modified, 1 CMC 3806(d).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

#### **70-10.1-915 Definitions**

(a) Added value components mean a minor attachment or minor embellishment to cut fabric, not appreciably affecting the identity of the finished garment. Examples of added value components include, but are not limited to, appliques, beads, spangles, embroidery, buttons, zippers, silk screen printing, rhinestones, labels, button holes, and partially assembled fabric components like pockets sewn on panels, detached hoods, detached collars, plackets, cuffs, fabric stripes sewn on panel, and belt loops.

(b) Cut fabric means:

- (1) An unassembled garment component cut to shape;
- (2) Of foreign origin; and
- (3) Imported into the CNMI for the purpose of being assembled with at least one other unassembled garment component to form an assembled garment for export.

(c) Cut fabric set means a group consisting of at least two cut fabric components packaged together, and will be assembled to form one complete garment. A cut fabric set may include added value components.

(d) Export value means the value of the finished garments as determined by any of the valuation methods contained in 19 U.S.C. 1401a, any subsequent amendments thereto, and any regulations passed thereunder.

(e) Garment Section Chief means the Chief of the Garment Section, for the Division of Customs, in the Department of Finance.

(f) Garment style refers to the specific size, shape, and color of the components of a fully assembled garment, including any added value components.

(g) Headnote 3(a) refers to the provisions of General Note 3(a)(iv), Harmonized Tariff Schedule of the United States (HTSUS).

(h) Foreign cost means actual cost for the foreign materials, including, but not limited to, the cost of the cut fabric set, accessories, packing material and cost of transporting those materials to the CNMI, but excluding any duties or taxes assessed on the materials by the CNMI, and any charges which may accrue after landing.

(i) Local value means that portion of the export value attributable to value added in the CNMI, and shall not be comprised of any foreign cost.

Modified, 1 CMC 3806(f), (g).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

Commission Comment: In subsections (a) and (h), the Commission moved the commas after fabric and set, respectively inside of the closing quotation marks. In subsection (i), the Commission moved the final period inside of the closing quotation mark.

#### **70-10.1-920 Excise Tax & Added Value Fee**

(a) Amount of Excise Tax

All cut fabric and added value components which are imported into the CNMI for first sale, use and manufacture, for business purposes or for personal use exceeding the value specified in 4 CMC 1402(c) of the Commonwealth Code, shall be imposed an excise tax in the amount of five percent ad valorem, payable upon arrival into the CNMI.

(b) Added Value Fee on Added Value Components

Notwithstanding the provisions of subsection (a) herein, added value components which are imported into the CNMI for the purpose of being incorporated into a garment for export to the United States will be exempt from excise tax, provided that the added value components are not resold in the CNMI. If not resold in the CNMI, such added value components shall be assessed an added value fee in the amount of five percent ad valorem, payable upon arrival into the CNMI.

(c) Exemption for Certain Cut Fabric

Notwithstanding subsection (a) herein, cut fabric which is imported into the CNMI for the purpose of being exported to the United States shall be exempt from excise tax, provided:

- (1) The cut fabric is packaged in a cut fabric set, in accordance with the regulations in this part;
- (2) The cut fabric is not intended to be resold in the CNMI; and
- (3) The finished garment has a local value to be added which complies with United States Customs Headnote 3(a). Modified, 1 CMC 3806(c), (d), (e), (f).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

#### **70-10.1-925 Required Pre-arrival Documentation**

(a) Application to Import Cut Fabric

(1) Ten days prior to the arrival of a cut fabric shipment into the CNMI, the importer shall provide the Garment Section Chief with an application to import cut fabric (hereafter application) into the CNMI.

(2) One application must be submitted for each garment style to be imported into the CNMI. If a single shipment contains multiple garment styles, then a separate application must be submitted for each garment style.

(3) Such application will contain the following information:

- (i) Date of application;
- (ii) Name of CNMI garment company assembling cut fabric;
- (iii) Location of facility in CNMI;
- (iv) Contact person and title at garment company;
- (v) Telephone number of contact person;
- (vi) Name and address of importer in the United States;
- (vii) Name of label (if known);
- (viii) Requested date of importation into CNMI;
- (ix) Anticipated date of export of assembled garment from CNMI;
- (x) Production schedule for garment factory assembling cut fabric sets;
- (xi) Description of garment or picture of finished garment;
- (xii) Description of fabric material;
- (xiii) Number of cut fabric sets to be imported;
- (xiv) Total estimated cost of cut fabric;
- (xv) Total estimated cost of added value components;
- (xvi) Total value landed cost;
- (xvii) Percentage of total export value of landed cost;
- (xviii) Total local value;
- (xix) Percentage of total export value of local value;
- (xx) Total export value; and
- (xxi) Price FOB SAIPAN, if different than subsection (a)(3)(xx) above.

(4) Upon payment of application fees, the Garment Section Chief will certify the shipment for importation and assembly in the CNMI and mark the application approved.

(b) Ruling Letter From United States Customs Service Required

(1) Prior to the importation of any cut fabric shipment into the CNMI, a ruling letter shall be submitted with each application from the United States Customs Service in accordance with the procedures set forth in 19 CFR 177.9, and any amendments, thereto. The ruling letter must contain a country of origin determination for the intended shipment and duty status, if any.



(2) For purposes of subsection (b)(1), a ruling letter from prior shipments, or from a different garment style within the same, or prior, shipment, may be supplied with an application, provided that the facts and rationale for the ruling are, or remain, substantially the same. If there are any substantial changes in the facts, then a new ruling letter must be supplied. Without limitation, an importer shall submit a new ruling letter for the following reasons:

- (i) Any appreciable modification to the assembly process; or
  - (ii) A change in number of cut fabric components comprising the fully assembled garment.
- (3) The ruling letter shall be attached to the application, or the application shall reference a United States Customs ruling number of a prior shipment, as provided for in subsection (b)(2). By indicating a reference number, the importer certifies that the facts and rationale in the ruling apply to the garment style being shipped.

(c) Production Details and Bill of Material Attached to Application

(1) Attached to the application the importer shall include:

- (i) Production details (written in English) providing a description of the cut fabric sets per style, or drawing of pieces, to be imported listing each cut piece, number of pieces, brief description of each piece, or drawings, sketch, diagram, picture or artwork of final assembled garment and its components;
- (ii) Description of any assembly or production operations to cut fabric set in country sourcing foreign material and those assembly sets to be undertaken or completed in CNMI; and
- (iii) Bill of material listing the foreign material for each garment style including but not limited to fabric cost, cutting cost, artwork, added value components, accessories, packing material and transportation to CNMI.

(2) Sample of the cut fabric set to be imported can be supplied to the Garment Section Chief in lieu of production details per subsection (c)(1)(i) above. Each sample will have the garment style clearly marked and referencing the application. These actual samples of cut fabric sets will not be returned.

(d) Copy of Original Commercial Invoice

(1) The importer, shall also attach to the application a copy of the commercial invoice covering each shipment of cut fabric sets. If the original invoice is not available, a proforma commercial invoice may be submitted in lieu of a copy of the original invoice prior to arrival (hereinafter, invoice).

(2) The invoice supplied pursuant to subsection (d)(1) shall contain the following information:

- (i) A style number listing each garment style to be produced;
- (ii) The number of cut fabric sets for each garment style;
- (iii) The price per cut fabric set;
- (iv) The total price of each garment style;
- (v) The total number and value of cut fabric sets for all garment styles on each invoice;
- (vi) The total price on invoice for all other foreign material in a garment style, if different than subsection (d)(2)(iii);
- (vii) The unit of measurement (weight, length or units), price per unit and total value of any ancillary materials necessary for assembly of the cut fabric sets. Examples include, but are not limited to, ribbon, thread, labels, tape, eyelets, buttons, snaps, zippers, beads, embroidered patches, hang tags, packing material; and
- (viii) The total price of all foreign material used in all garment styles.

(e) Copy of Original Added Value Commercial Invoice

(1) If an exported garment is to contain added value components, there must be attached to the application an added value commercial invoice.

(2) A proforma added value commercial invoice may be submitted in lieu of an actual added value commercial invoice if an actual added value commercial invoice is unavailable (hereinafter added value invoice).

(3) The added value invoice supplied shall contain the following information:

- (i) A style number corresponding to a particular garment style to be produced as detailed in the application;
- (ii) The total number of added value components per garment style;
- (iii) A brief description of the added value component (examples include but are not limited to silk screen printing, embroidery, beads, zippers, buttons, pockets);
- (iv) The price per added value component; and
- (v) The total price of all added value component orders in the shipment.

(f) Format of Required Documentation

The Garment Section Chief shall prescribe the format, and make available forms which shall contain the information mandated in subsections (a) through (d).

Modified, 1 CMC 3806(c), (e), (f), (g).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

Commission Comment: In subsections (a)(2), (d)(1), (d)(2)(vi), (d)(2)(viii) and (e)(1), the Commission moved punctuation inside of the closing quotation marks to correct manifest errors. In subsection (f), the Commission corrected the cross-references.

#### 70-10.1-930 Processing of Application

(a) Location

The documents described in 70-10.1-925 shall be submitted to the Garment Section Chiefs office located at the seaport facility.

(b) Fees

(1) There shall be a processing and inspection fee in the amount of \$150.00 for each application submitted.

(2) If an application is submitted less than ten days prior to arrival of a shipment, a \$75.00 late filing penalty shall be assessed.

(c) Denial of Application

(1) Within 2 business days after receipt of an application, the applicant shall receive notice as to whether the application is denied.

(2) The following are prima facie grounds for denial of an application:

(i) The application was submitted to the Garment Section Chief less than five days (120 hours) prior to arrival of shipment;

(ii) The applicant fails to supply all information and documentation required above;

(iii) The facts described in the ruling letter materially deviate from the information supplied pursuant to 70-10.1-925(c); or

(iv) From the face of the application, it appears to the Garment Section Chief that the finished garments will not meet the requirements for duty free entry into the United States under Headnote 3(a).

(3) If an application is denied for the reasons detailed in subsection (c)(2)(i) through (c)(2)(iii), then the cut fabric shipment will be assessed a penalty payment equal to one and one-half percent of the total value of the shipment.

(4) If an application is denied for the reasons detailed in subsection (c)(2)(iv), then the cut fabric shipment will be assessed an excise tax of five percent ad valorem.

(5) If foreign material imported under the application is later exported either to the United States or other countries, the excise tax collected will be applied to any user fee assessed and due upon shipment of completed garments.

Modified, 1 CMC 3806(c), (e), (f), (g).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

Commission Comment: In subsection (c)(4), the Commission corrected the spelling of valorem.

#### 70-10.1-935 Inspection of Cut Fabric

(a) Inspection

Upon arrival, all shipments of cut fabric shall be inspected by a customs officer prior to clearance and release.

(b) Packing Requirements

(1) All cut fabric shall be packaged in cut fabric sets.

(2) All cut fabric sets and added value components shall be shipped in clear polybags. No polybag may contain more than one garment style.

(3) All polybags shall have a label affixed to it, describing the contents therein by style number which shall correspond to the style number(s) on the invoice and added value invoice. The label will show the polybag number, number of cut fabric sets, and added value components contained therein.

(c) Documents

The following documents shall be submitted to the customs officer upon arrival of cut fabric shipment:

(1) Originals of the invoice and added value invoice;

(2) Copy of the bill of lading for shipment;

(3) A copy of a packing list which shall identify:

(i) All polybags numbers by style number corresponding to the style number on the invoice and added value invoice; and

(ii) Number of cut fabric sets contained within each polybag by style number;

(4) Copies of all documents submitted with the application.

(d) Denial of Clearance

Cut fabric will be denied clearance into the CNMI for any of the following reasons:

(1) Complete set of documents are not provided at time of arrival;

(2) Cut fabric sets are not packed in clear polybags and marked to verify each cut fabric set or added value component against packing list; or

(3) The shipment described in the application and the actual shipment are not the same such that the actual shipment appears not to comply with Headnote 3(a) requirements or the ruling letter from United States Customs Service.

(e) Effects of Denial of Clearance

(1) Shipments denied customs clearance pursuant to subsections (d)(1) and (d)(2) above will be subject to the provisions of 70-10.1-205 herein, and shall only be released upon the consignees cure of defect(s).

(2) Shipments denied clearance under subsection (d)(3) shall be released upon consignees payment of an excise tax equal to 5% ad valorem.

(3) Consignee or importer can apply to Garment Section Chief to apply the excise tax collected under subsection (e)(2) to a user fee assessment on exported garments if cut fabric sets are later found to be exported into the United States in compliance with Headnote 3(a).

Modified, 1 CMC 3806(c), (f), (g).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

Commission Comment: In subsections (b)(1), (b)(2) and (b)(3), the Commission moved punctuation inside of the closing quotation marks. In subsection (e)(2), the Commission corrected the spelling of valorem.

#### **70-10.1-940 On-site Inspections**

(a) Consent to Inspection

By submitting the application information pursuant to 70-10.1-925 herein, the importer of cut fabric consents to an on-site verification of the assembly process by the Garment Section Chief or any duly authorized customs officer.

(b) Time of Inspection

Such inspection(s) shall only occur on the dates and times specified for production on the application.

(c) Discretion of Garment Section Chief

Such inspection(s) shall be undertaken at the sole discretion of the Garment Section Chief.

(d) Site of Inspection

Such inspection(s) shall be confined to the area(s) of the manufacturing facility where:

(1) Cut fabric sets are assembled; and

(2) Where production records are kept.

(e) Content of Inspection

(1) Such inspection(s) will be for the sole purpose of determining whether or not the importer of cut fabric is complying with

(i) The assembly process submitted pursuant to 70-10.1-925(c), and

(ii) Comports with the production description in the United States Customs Ruling Letter.

(2) Such inspection shall consist of the following verification measures:

(i) Visual confirmation that the specified cut fabric sets are being assembled together into finished garments;

(ii) Inspection of production records for the purpose of determining:

(A) How many finished garments are assembled per day;

(B) Total/amount of garments finished;

(C) How many garments have been packed; and

(D) Whether any deviations from the production schedule have occurred;

(iii) Comparison of final garments to visual depiction at time of application;

(iv) Comparison of actual production process to description pursuant to 70-10.1-925(c), and to the United States Customs Ruling Letter; and

(v) Comparison of inventory records for actual production and shipment against the information supplied in the application to determine whether the import and export of the finished garments are consistent with inventory counts.

(f) Penalties at Time of Inspection

If the manufacturer is not in compliance under the regulations in this part, has faulty or incomplete record keeping, or is not performing under the guidelines of Headnote 3(a), the Garment Section Chief may impose penalties as sanctioned under 70-10.1-945(c).

(g) Refusal to Allow Inspection

If the Garment Section Chief, or any duly authorized customs officer, is denied admittance by the garment manufacturer to inspect pursuant to this section, the importer of cut fabric, in addition to being subject to penalties sanctioned under 70-10.1-945(c) herein:

(1) Shall be denied export clearance for all finished garments covered under the application; and

(2) An excise tax of 5% ad valorem shall be imposed upon the entire shipment.

Modified, 1 CMC 3806(c), (d), (f), (g).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

Commission Comment: The original paragraphs of subsection (e) were not designated. The Commission designated subsections (e)(1) and (e)(2).

In subsections (a) and (f), the Commission corrected the cross-references. In subsection (e)(2)(i)(D), the Commission replaced the final period with a semi-colon. In subsection (g), the Commission moved the comma after fabric inside of the closing quotation mark. In subsection (g)(2), the Commission corrected the spelling of valorem.

#### **70-10.1-945 Verification of Garment Export**

##### **(a) Verification**

Upon export clearance of fully assembled garments, a customs officer shall verify that the export shipment matches the projections and information on the application. The customs officer shall verify that:

- (1) The export invoice shows the quantity of finished garments exported to be the same as the number of cut fabric sets imported;
- (2) The export value and FOB price is equal to the original projections on the application; and
- (3) The fully assembled garments match the visual depictions in the applications.

##### **(b) Excise Tax upon Shortfall**

- (1) Subject to the Garment Section Chiefs approval, reasonable allowances will be made in the verification calculation, required under subsection (a) herein to account for any defects in the manufacturing process.
- (2) However, if the number of cut fabric sets imported into the CNMI under any application exceeds the number of exported finished garments attributable to that application, an excise tax of 5% ad valorem shall be imposed upon the difference in foreign cost between the number of imported cut fabric sets and the number of finished garments actually exported.

##### **(c) Penalties**

The following penalties will be assessed under the following conditions:

- (1) False declaration or submission of false documents not conforming to the regulations in this part or Headnote 3(a) requirements will result in NO CERTIFICATE OF ORIGIN being issued for that shipment from the Garment Section Chief;
- (2) Three shipments in violation of these regulations within a one-year period, or one willful violation of these regulations, will result in a nine-month suspension of a garment manufacturer from obtaining permission on future approval of applications to import cut fabric. Such violations shall be determined by the Garment Section Chief with the concurrence of the Director of Customs;
- (3) Any garment manufacturer who is placed on such suspension shall have the right to an administrative hearing pursuant to the procedures established under the Commonwealth Administrative Procedures Act, 1 CMC 9108 - 9115, upon the filing of a request for such hearing with the Department of Finance, Customs Division.

Modified, 1 CMC 3806(c), (d), (f), (g).

History: Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003).

Commission Comment: In subsection (b)(2), the Commission corrected the spelling of valorem.

### **Part 1000 - Custom Bonded Warehouses**

#### **Subpart A - Introduction**

##### **70-10.1-1001 Authority**

The authority for the promulgation and issuance of this part is derived from the Commonwealth Code, including, but not limited to, the following sections: 1 CMC 2553; 1 CMC 2557; 4 CMC 1104; 4 CMC 1402(b); 4 CMC 1818; 6 CMC 2304; and 6 CMC 2305.

Modified, 1 CMC 3806(b), (d), (f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: The Department of Finance promulgated this new part as part XII of the Customs Service Regulations. For consistency in the NMIAC, the Commission moved this part before part X, codified at part 1100. PL 14-35 (effective Oct. 12, 2004) repealed and reenacted 4 CMC 1103-1106, 4 CMC division 1, chapter 8 and 4 CMC division 1, chapter 9. PL 14-35 4 ( 1820), to be codified at 4 CMC 1820, grants the Secretary of Finance authority to prescribe adopt regulations issued under the U.S. Internal Revenue Code necessary for the proper administration and enforcement of Commonwealth tax laws. PL 14-35 4 ( 2001), to be codified at 4 CMC 1901, grants the Secretary of Finance broad authority to prescribe necessary rules and regulations to implement the CNMI tax laws.

#### **70-10.1-1002 Purpose**

- (a) To defer the payment of excise tax on goods prior to their formal entry into the local stream of commerce, thus reducing administrative costs in processing excise tax refunds, and increasing business cash flow.
- (b) To exempt from excise tax imported goods that will eventually be either exported in the same condition or used, consumed, or expended in the processing of other goods for export.
- (c) To regulate the authorized removal of suspicious cargo from official points of entry to other locations prior to inspection and clearance, thus providing more thorough and complete customs inspection of incoming freight and enhancing homeland security.

Modified, 1 CMC 3806(g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: In subsection (a), the Commission changed steam to stream to correct a manifest error.

#### **70-10.1-1004 Definitions**

- (a) Applicant means a person or corporation with a business license who applies to operate as a licensed customs bonded warehouse.
- (b) Customs bonded warehouse or bonded warehouse is a building or other secured area, licensed as a bonded warehouse by the Director of Customs, or Secretary of Finance, in which dutiable goods may be stored, manipulated, or undergo manufacturing operations without payment of excise tax prior to such time as the goods are withdrawn from the warehouse for local consumption. Any such area will be considered an extension of the points of entry for purposes of customs jurisdiction.
- (c) CNMI means the government of the Commonwealth of the Northern Marianas Islands with jurisdiction over its own customs territory.
- (d) Director means the director of the Division of Customs in the CNMI Department of Finance.
- (e) Department means the CNMI Department of Finance.
- (f) Secretary means the Secretary of Finance.
- (g) Permit means a permit to operate a place as a bonded warehouse.
- (h) Permittee means a person, or corporation, who is the operator of a bonded warehouse.

Modified, 1 CMC 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: The Commission corrected a numbering error in the original section. In subsections (c) through (g), the Commission replaced the final semi-colon with a period to correct manifest errors. In subsection (h), the Commission corrected the spelling of permittee.

### **Subpart B - Bonded Warehouses; Designation; Bonding Requirements; Supervision; Preconditions**

#### **70-10.1-1006 Establishment of Bonded Warehouse**

Buildings or parts of buildings and other enclosures may be designated by the Director as a bonded warehouse, upon submission of an application and granting of a license. Any such area will be considered an extension of the points of entry for purposes of customs jurisdiction.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **70-10.1-1008 Classes of Bonded Warehouses**

The following classes of bonded warehouses are hereby created:

- (a) Class A. A class A bonded warehouse is a private bonded warehouse used by an importer for the storage of merchandise exclusively belonging or consigned to the proprietor thereof.
- (b) Class B. A class B bonded warehouse is a public bonded warehouse used exclusively for the inspection and storage of merchandise from different importers, or for inspection and storage by the Department of incompletely cleared merchandise, or suspicious merchandise as authorized by 6 CMC 2304.
- (c) Class C. A class C bonded warehouse is an in-bond manufacturing warehouse used solely for production of articles made in whole or in part of imported materials. Class C warehouses may not be used to manufacture or assemble garments. The Director shall issue CNMI country of origin certificates when necessary and proper.

(d) Class D. A class D bonded warehouse is a bonded warehouse established for the cleaning, sorting, re-packing, or otherwise changing the condition of, but not the manufacturing of, imported merchandise, under Customs supervision, and at the expense of the proprietor. Such class D designation may be in conjunction with any of the above designations.

Modified, 1 CMC 3806(f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **70-10.1-1010 Bonding Requirement**

Before any imported merchandise, not finally released from the Departments custody, shall be stored in any such bonded warehouse the owner or permittee thereof shall give a bond in such sum and with such sureties as may be approved by the Director of Customs to secure the government against any loss of excise tax or expense connected with or arising from the deposit, storage, or manipulation of merchandise in such warehouse. Such bond shall conform to the requirements of subpart D.

Modified, 1 CMC 3806(c), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: The Commission corrected the spelling of permittee.

#### **70-10.1-1012 Staffing Requirement**

(a) CNMI Customs Officer. Except as otherwise provided in the regulations in this part, bonded warehouses shall be used solely for the storage of imported merchandise and shall be placed in the charge of a CNMI customs officer, who, together with the proprietor thereof, shall have joint custody of all merchandise stored in the warehouse. The customs officer assigned to a bonded warehouse shall have total access to, without limitation, such licensees books, records and receipts relating to the entry and withdrawal of merchandise from such customs bonded warehouse. The compensation of such customs officer and other customs employees appointed to supervise the receipt of merchandise into any such warehouse and deliveries therefrom shall be reimbursed to the government by the proprietor of such warehouse. Each bonded warehouse shall be assigned a customs officer by the Director.

(b) Private Staff. A licensed bonded warehouse shall provide all labor and management on the merchandise so stored by hiring private staff. Such licensee shall also maintain all records necessary for the customs officer assigned to that customs bonded warehouse to assess inventory levels and whether merchandise is withdrawn and excise taxes payable thereon. The customs officer assigned to that bonded warehouse may enter the premises at any time to inspect operations and records.

(c) Compensation of Private Staff. Permittees of a class A and B customs bonded warehouse shall pay their employees, agents, and contractors a wage at least equal to the federal minimum wage currently prevailing in the United States.

Modified, 1 CMC 3806(d), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: In subsection (c), the Commission corrected the spelling of permittees.

#### **70-10.1-1014 Accounting Forms**

The Director of Customs shall from time to time prescribe such forms as may be necessary to account for the deposit and withdrawal of merchandise in bonded warehouses.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **70-10.1-1016 Permitting of Bonded Warehouse**

The Director of Customs, or Secretary may issue a permit to an applicant who:

- (a) Completes an application in accordance with subpart C;
- (b) Provides such security or bond as may be required under 70-10.1-1010 and in accordance with subpart D; and
- (c) Pays any fee required to be paid under subpart E.

Modified, 1 CMC 3806(c), (f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **70-10.1-1018 Cap on Authorized Permits**

The following number of bonded warehouse permits are hereby authorized:

SENATORIAL DISTRICT

#1          #2          #3

CLASS 4 4 12  
A

CLASS 4 4 12  
B

CLASS 5 5 15  
C

CLASS 5 5 15  
D

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1020 Prohibition on Owning Cartage Company**

No license shall be issued to any applicant involved directly or indirectly, or through third parties in cartage, common carrier, inland trucking, unloading, or transportation of the merchandise from importation point.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**Subpart C - Application to Conduct Business as a Bonded Warehouse**

**70-10.1-1022 Application Requirements**

Any applicant who wishes to apply for a license to operate a bonded warehouse shall submit a completed application on a form to be prescribed by the Director, together with a detailed plan of the proposed bonded warehouse, to the Director.

(a) Such plan shall detail the following information:

- (1) Whether the place proposed to be operated as a bonded warehouse exists or is to be constructed;
- (2) The type of construction of the facility regardless of whether or not it already exists;
- (3) The area, within the facility, that is to be used for the storage of goods;
- (4) The amount and policy holder of fire and general liability insurance covering the value of the merchandise to be stored;
- (5) Whether or not the applicant intends to store any hazardous materials, and what type;
- (6) Affidavit that applicant has no ownership, directly, indirectly or through related third parties of cartage per 70-10.1-1020.

(b) The Director shall not issue a license to an applicant unless:

- (1) The applicant is of good character and has not been convicted, found guilty or plead guilty to any criminal act;
- (2) The site of the proposed bonded warehouse is within an area served by a customs office;
- (3) The applicant has sufficient financial resources to lease or purchase the facility;
- (4) The applicant will provide conditions suitable for the safekeeping of goods, including any hazardous materials;
- (5) The Department is able to provide customs services with respect to the proposed bonded warehouse;
- (6) The terms and conditions under which a license may be issued are included, such as the extent and circumstances to which, in accordance with 70-10.1-1070 goods may be manipulated, unpacked, packed, altered, or combined with other goods while in bonded warehouse; and
- (7) The applicant certifies that he or she shall comply with the federal minimum wage law requirements of 70-10.1-1012 for class A and B customs bonded warehouses.

(c) All bonded warehouse facilities operating for the storage, treatment or handling of hazardous waste shall also attach a copy of their permit to operate such a facility as required by the Department of Environmental Quality (DEQ) regulations, Commonwealth Register, volume 6, number 6, section VII, June 15, 1984, page 2830, as amended, and otherwise be in compliance with all applicable Department of Environmental Quality, Coastal Resource Management, Department of Fish and Wildlife, and federal Environmental Protection Agency laws and regulations.

Modified, 1 CMC 3806(c), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: In subsection (a)(6), the original cross-reference to section 4321.6, codified at 70-10.1-1018, was incorrect. The Commission changed the citation so that it references section 4321.7, codified at 70-10.1-1020. In subsection (b)(1), the Commission replaced the final period with a semi-colon.

**Subpart D - Bonds and Other Security**

**70-10.1-1024 Requirement of Bond**

The Director may require such bonds or other security as s/he, or the Secretary, may deem necessary for the protection of the revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary or the Department may be authorized to enforce.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1026 Conditions and Form of Bond**

Whenever a bond is required under the regulations in this part, the Secretary may require:

- (a) Cash or cash equivalent in lieu of bond. The Secretary is authorized to permit the deposit of money or obligation of the United States, in such amount and upon such conditions as he may prescribe, in lieu of sureties on any bond required or authorized by regulation or instruction which the Director of Customs is authorized to enforce;
- (b) Letter of credit issued yearly, or otherwise, by an acceptable banking institution;
- (c) Personal guarantees in a form acceptable to the Director;
- (d) A bond issued by a company that is licensed or otherwise authorized under the laws of the CNMI or United States to carry on the fidelity or surety class of insurance business and that the Director and the Secretary recommended in writing as acceptable as an institution whose bonds may be accepted by the CNMI;
- (e) Except as otherwise specifically provided by law, prescribe the conditions and form of such bond and the manner in which the bond may be filed, and fix the amount of penalty thereof, whether for the payment of liquidated damages or of a penal sum;
- (f) The approval of the sureties on such bond, without regard to any general provision of law;
- (g) Authorization, to the extent that s/he may deem necessary, for the taking of a consolidated bond (single entry or term), in lieu of separate bonds to assure compliance.

Modified, 1 CMC 3806(d), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: In subsections (a), (e) and (f), the Commission replaced the final period with a semi-colon to make the punctuation consistent.

**70-10.1-1028 Cancellation of Bond**

The Secretary may authorize the cancellation of any bond provided for in this subpart, or any charge that may have been made against such bond, in the event of a breach of any condition of the bond, upon the payment of such lesser amount of penalty or upon such other terms and conditions as he may deem sufficient. In order to assure uniform, reasonable, and equitable decisions, the Secretary shall publish guidelines establishing standards for setting the terms and conditions for cancellation of bonds or charges thereunder.

Modified, 1 CMC 3806(d).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**Subpart E - License and Fees**

**70-10.1-1030 License Requirement**

All bonded warehouses shall be licensed by the Department prior to engaging in such business.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1032 License Fee**

- (a) Every licensee shall pay to the Department an annual fee for the license, for the period beginning on the day on which the license is issued and ending on September 30th. Annual fees will be prorated on the portions of the year remaining after the license is issued. The annual fee will be determined on the basis of the amount of security deposit under subpart D, in accordance with the table to this section.

TABLE

Amount of Security Deposited	Amount of Fee Payable Per Fiscal Year
Up to \$10,000	\$1,000



\$10,001 to \$50,000 \$1,500

\$50,001 to \$2,000  
\$200,000

\$200,001 to \$3,000  
\$500,000

More than \$5,000  
\$500,000

(b) The fee for each subsequent year will be paid by October 1st and no license will be issued without the fee being paid.

Modified, 1 CMC 3806(c).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1034 Amendment of License**

The Director may amend a license only where the name of the licensee has changed legally, or change of ownership requiring new owner to meet the terms and conditions of subpart D.

Modified, 1 CMC 3806(c).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1036 Cancellation or Suspension of Licenses**

(a) The Director may cancel a license where the licensee:

- (1) No longer owns or leases the place that is licensed as a bonded warehouse;
- (2) Requests the Director in writing to cancel the license; or
- (3) Declares bankruptcy.

(b) Subject to 70-10.1-1038 the Director may suspend or cancel a license where the licensee:

- (1) Is the subject of a receivership in respect of the licensee's debts;
- (2) Fails to comply with any laws enacted by the CNMI to prohibit, control, or regulate the importation or exportation of goods;
- (3) Has, in the course of operating the bonded warehouse, acted dishonestly in business dealings with customs brokers, importers, carriers, and other appointed officials;
- (4) Has been incompetent in the operation of the bonded warehouse;
- (5) The volume of goods being received in the bonded warehouse is no longer sufficient to warrant the continued operation of the bonded warehouse;
- (6) There is no longer a need for a bonded warehouse in the area in which the bonded warehouse is located;
- (7) The Department is no longer able to provide customs services with respect to the bonded warehouse;
- (8) The licensee manipulates, unpacks, packs, alters, or combines the goods with other goods while in the bonded warehouse other than in accordance with the terms and conditions set out in the license.

(c) Following the suspension or cancellation of a license:

- (1) An officer may lock and seal the bonded warehouse and keep it locked and sealed during the period of suspension.
- (2) The Director shall immediately after suspending a license, give to the licensee a notice confirming the suspension and providing all relevant information concerning the grounds on which the Director has suspended the license.
- (3) The licensee may, within ninety days after the day on which the license is suspended, make representation to the Director regarding why the license should be reinstated.
- (4) Director shall, before canceling a license under this section, give the licensee ninety days notice of the proposed cancellation and provide the licensee with all relevant information concerning the grounds on which the Director proposes to cancel the license.
- (5) The licensee may, within 90 days after the day on which the notice referred to in subsection (c)(4) is given, make representation to the Director regarding why the license should not be cancelled.
- (6) A decision to cancel or suspend a license by the Director shall be subject to review pursuant to the Administrative Procedure Act, 1 CMC 9101, et seq.

(7) Upon a final determination by the Director to cancel a license, all excise tax on taxable merchandise stored in a bonded warehouse shall become immediately payable.

Modified, 1 CMC 3806(c), (e), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: In subsection (a)(2), the Commission changed request to requests and inserted the final semi-colon. In subsection (b), the Commission changed the semi-colon at the end of the opening paragraph to a colon. In subsection (c)(6), the Commission changed Procedures to Procedure to correct a manifest error.

#### **70-10.1-1038 Reinstatement of Suspended Licenses**

The Director may reinstate a suspended license where the cause for the suspension no longer exists. In no event shall a license be suspended for longer than ninety days from the date of final determination to suspend by the Director.

Modified, 1 CMC 3806(c).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

### **Subpart F - Bonded Warehouse Operations and Facilities**

#### **70-10.1-1040 Security**

Every licensee shall provide at the bonded warehouse such facilities, equipment and personnel as are sufficient to control access to the bonded warehouse premises and provide secure storage of the goods in it including:

- (a) Doors and other building components of sturdy construction;
- (b) Secure locks on doors and windows;
- (c) Signs that indicate the security requirements applicable to the premises; and
- (d) Where the bonded warehouse will be used for the storage of designated goods, such additional facilities and equipment as may be required by the Director to ensure the secure storage of those goods.

Modified, 1 CMC 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: In subsection (d), the Commission changed the final semi-colon to a period to correct a manifest error.

#### **70-10.1-1042 Facilities**

Every licensee shall provide at the bonded warehouse such facilities to provide:

- (a) Adequate space for the examination of goods by officers; and
- (b) Where a bonded warehouse forms only part of a building, the licensee shall, if so requested by the Director, keep the bonded warehouse separate from the remainder of the building by a partition or other structure.

Modified, 1 CMC 3806(f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **70-10.1-1044 Personnel and Equipment**

Every licensee shall provide at the bonded warehouse:

- (a) The personnel and equipment necessary to ensure that the goods to be examined by a customs officer are made available to the customs officer for examination; and
- (b) The personnel necessary to furnish information, for audit purposes, to a customs officer with respect to the bonded warehouse operations and inventory system.

Modified, 1 CMC 3806(f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **70-10.1-1046 Operation and Maintenance Standards**

(a) Every licensee shall ensure that the goods received in the bonded warehouse are:

- (1) Stored safely and securely in the area designated for that purpose in the plan referred to in 70-10.1-1022; and
- (2) Identified in such a manner so as to enable a customs officer to locate the goods and check them against the appropriate documentation.

(b) No person, other than the licensee, an employee of the licensee, or an employee of a carrier engaged in the delivery of goods to, or the removal of goods from, the bonded warehouse shall enter any place in it where goods are stored, without the written authorization or the attendance of an customs officer.

(c) Every licensee of a bonded warehouse shall have in place:

- (1) Procedures to maintain the security of, and restriction of access to, the bonded warehouse; and
- (2) Procedures to ensure that personnel working in the bonded warehouse are aware of and follow the procedures referred to in this section.

Modified, 1 CMC 3806(c), (d), (f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **70-10.1-1048 Penalty for Non-compliance with this Subpart**

A bonded warehouse may be locked and sealed by a customs officer where the Director requested that the bonded warehouse be locked and sealed, for the purpose of verifying that the licensee is in compliance with this subpart.

Modified, 1 CMC 3806(d).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**Subpart G - Entry and Withdrawal of Merchandise**

**70-10.1-1050 Receipt of Goods**

All containers shall remain under seal until they arrive at the bonded warehouse. A customs officer shall be present to break the container seal. Every licensee shall acknowledge receipt of imported goods into the bonded warehouse in respect of which their license was issued by:

- (a) Endorsing the transportation document(s) presented to the licensee by the carrier (including invoices and bills of lading);
- (b) Recording on a form to be prescribed by the Director, the quantity, description, value and estimated tax of the imported goods.

Modified, 1 CMC 3806(f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1052 Incomplete Entry**

(a) Customs shall notify the bonded warehouse of unentered merchandise whenever the entry of any imported merchandise is not made within the time provided by law because:

- (1) In the opinion of the Department, the entry of imported merchandise cannot be made for want of proper documents or other cause;
- (2) Customs Service discovers or has probable cause to believe that contraband has entered the Commonwealth; or
- (3) The Department believes that any merchandise is not correctly and legally invoiced.

(b) If the merchandise is not intended to be stored at any particular bonded warehouse, such unentered, suspicious or contraband merchandise may be stored and inspected at a class B bonded warehouse.

(c) After notification under subsection (a) herein, the bonded warehouse shall arrange for the transportation and storage of the merchandise at the risk and expense of the consignee. The merchandise shall remain in the bonded warehouse until entry is made or completed and the proper documents are produced, or disposed of in accordance with 70-10.1-1062. Such merchandise shall accrue interest on excise taxes owed and storage fees.

Modified, 1 CMC 3806(c), (f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1054 Withdrawal of Merchandise; Time; Payment of Charges**

(a) Any merchandise subject to excise tax (including international travel merchandise), with the exception of perishable articles and explosive substances, may be entered for warehousing and be deposited in a bonded warehouse at the expense and risk of the owner, purchaser, importer, or consignee. Such merchandise may be withdrawn, at any time within 5 years from the date of importation, for consumption upon payment of the excise tax and storage fees.

(b) Any merchandise so deposited may be withdrawn from a bonded warehouse for exportation or for transportation and exportation to a foreign country, or the shipment or for transportation and shipment to the Virgin Islands, American Samoa, Wake Island, Midway Islands, Kingman Reef, Johnston Island, or the island of Guam, without the payment of excise tax thereon, or for transportation and re-warehousing at another port or elsewhere, or for transfer to another bonded warehouse at the same port; except that the total period of time for which such merchandise may remain in bonded warehouse shall not exceed 5 years from the date of importation.

(c) Except as provided in subsection (b) herein, payment of excise tax and storage fees are paid to the Department at the time the merchandise is withdrawn from the bonded warehouse. Duties shall be paid directly to the customs officer assigned to that bonded warehouse. The bonded warehouse shall contact the designated customs officer prior to withdrawal.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1056 Destruction of Merchandise at Request of Consignee**

Merchandise entered under bond, under any provision of law, may, upon payment of all charges other than excise tax on the merchandise, be destroyed, at the request and at the expense of the consignee, within the bonded period under customs supervision, in lieu of exportation, and upon such destruction the entry of such merchandise shall be liquidated without payment of excise tax shall be refunded.\*

\*So in original.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1058 Transfer and Removal of Goods**

(a) Where there is a transfer of ownership of goods stored in a bonded warehouse, the importer or owner of the goods shall submit a transfer document in the prescribed form to an officer at the customs office where the goods were entered.

(b) Where the importer or owner of goods stored in a bonded warehouse wants the goods removed from the bonded warehouse in smaller units, the importer or owner shall submit to the Director

- (1) Where the goods are to be released, an amended accounting in a form to be prescribed by the Director; or
- (2) Where the goods are not to be released, an amended description in the prescribed form.

Modified, 1 CMC 3806(f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **Subpart H - Warehouse Goods Deemed Abandoned or Unclaimed**

##### **70-10.1-1060 Abandoned Merchandise**

(a) Merchandise upon which any excise tax or storage fees are unpaid, remaining in bonded warehouse beyond 5 years from the date of importation, shall be regarded as abandoned. Title in abandoned merchandise shall automatically vest in the CNMI. The Director may sell or destroy such merchandise pursuant to law. If the Director elects to sell the merchandise, the proceeds of sale shall be paid according to 70-10.1-1064 herein.

(b) Merchandise upon which all excise tax and charges have been paid remaining in bonded warehouse beyond 5 years from the date of importation, shall be considered unclaimed and treated in accordance with 70-10.1-1062 herein.

Modified, 1 CMC 3806(c).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

##### **70-10.1-1062 Unclaimed Merchandise**

(a) Any unentered merchandise which shall remain in a bonded warehouse, pursuant to 70-10.1-1052, for 6 months, but less than 5 years, from the date of importation thereof, without all estimated taxes, fees and interest thereon having been paid, shall be considered unclaimed and subject to divestiture of title to the CNMI, and subject to sale by the Director free and clear of any liens or encumbrances.

(b) Once merchandise is deemed unclaimed, the Department shall provide 30 days notice to all known interested parties that the title to such merchandise is subject to divestiture, either by operation of law to the CNMI or by subsequent sale to a third party, on the 30th day after the date of the notice. If no interested party is known, such notice shall, at a minimum, include publication in one local newspaper of general circulation once per week for three consecutive weeks, the notice period running 30 days from the first date of publication. Notice shall contain the date, time and location of any sale.

(c) Unclaimed merchandise may be reclaimed during the notice period provided that:

(1) Prior to the 30th day of the notice period the consignee or owner pays the Department a reclamation penalty equal to five percent of the fair market value for such merchandise as determined by the invoice value; and

(2) Immediate payment of any excise taxes, storage fees and interest thereon. No unclaimed merchandise may be entered or exported or withdrawn by the owner or consignee until such payment is made.

(d) For purposes of this section, the computation of excise taxes, storage fees and interest thereon shall be subject to rates applicable at the time the merchandise is reclaimed or sold.

Modified, 1 CMC 3806(c), (e), (f), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: In subsection (b), the Commission deleted the repeated word sale.

##### **70-10.1-1064 Proceeds of Sale**

The surplus of the proceeds of sales under 70-10.1-1062(a), if any, after the payment of excise tax, storage fees, and interest thereon, and the satisfaction of any lien or freight, charges, or contribution in general average, shall be deposited in the general fund of the CNMI, if claim therefore shall not be filed with the Director within ten days from the date of sale, and the sale of such merchandise shall exonerate the master of any vessel in which the merchandise was imported from all claims of the owner thereof, who shall, nevertheless, on due proof of his interest, be entitled to receive from the Department the amount of any surplus of the proceeds of sale.

Modified, 1 CMC 3806(c), (e), (f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

##### **70-10.1-1066 Redemption**

Whenever any party having lost a substantial interest in merchandise by virtue of title vesting in the CNMI under 70-10.1-1062(a), can establish such title or interest to the satisfaction of the Secretary within 30 days after the day on which title vests in the CNMI, or can establish to the satisfaction of the Secretary that the party did not receive notice of sale as provided herein, the Secretary may, upon receipt of a timely and proper petition and upon finding that the facts and circumstances warrant, pay such party out of the Department the amount the Secretary believes the party would have received under\* had the merchandise been properly noticed and sold. The decision of the Secretary shall be final and conclusive with respect to all parties.

\*So in original.

Modified, 1 CMC 3806(c).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

#### **Subpart I - Manipulation in Public or Private Warehouse**

**70-10.1-1068 Original Packaging Requirement**

Unless by special authority of the Director, no merchandise shall be withdrawn from a bonded warehouse in less quantity than an entire bale, cask, box, or other package. All merchandise so withdrawn shall be withdrawn in the original packages in which imported.

Modified, 1 CMC 3806(g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: The Commission changed quantity that an to quantity than an to correct a manifest error.

**70-10.1-1070 Manipulation Allowed for Class D Bonded Warehouses**

Every licensee shall ensure that goods are not manipulated, altered or combined with other goods while in a bonded warehouse, except for class D bonded warehouses for the purpose of, or in the course of:

- (a) Disassembling or reassembling goods that have been assembled or disassembled for packing, handling or transportation;
- (b) Displaying;
- (c) Inspecting;
- (d) Marking, labeling, tagging or ticketing;
- (e) Packing, unpacking, packaging or re-packing;
- (f) Removing from the warehouse, for the sole purpose of soliciting order for goods or services, a small quantity, or a portion, a piece or an individual object, that represents the goods;
- (g) Storing;
- (h) Testing; or
- (i) Any of the following that do not materially alter the characteristics of the goods:
  - (1) Cleaning;
  - (2) Diluting;
  - (3) Normal maintenance and servicing;
  - (4) Preserving;
  - (5) Separating defective goods from prime quality goods,
  - (6) Sorting or grading; and
  - (7) Trimming, filing, slitting or cutting.

Modified, 1 CMC 3806(f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**Subpart J - Allowance for Loss; Liens; Hearings**

**70-10.1-1072 Allowance for Loss, Abandonment**

In no case shall there be any abatement or allowance made in the excise tax for any injury, deterioration, loss, or damage sustained by any merchandise while remaining in Department custody, except that the Secretary is so authorized, upon production of proof satisfactory to him or her of the loss or theft of any merchandise while in the Departments custody. The decision of the Secretary as to the abatement or refund of duties on any such merchandise shall be final and conclusive upon all persons.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1074 Liens**

Whenever a customs officer shall be notified in writing of the existence of a lien for freight, charges upon any imported merchandise sent to the bonded warehouse, or taken possession by the Department, he shall refuse to permit delivery thereof from the bonded warehouse until proof shall be produced that the said lien has been satisfied or discharged. The rights of the CNMI shall not be prejudiced nor affected by the filing of such lien, nor shall the Department or its officers be liable for losses of<sup>2</sup> damages consequently upon such refusal to permit delivery. If merchandise, regarding which such notice of lien has been filed, shall be forfeited or abandoned and sold, the freight, charges, or contribution in general average due thereon shall be paid from the proceeds of such sale in the same manner as other lawful charges and expenses are paid therefrom.

\*So in original.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**70-10.1-1076 Procedures for Hearing**

Unless a provision of the regulations in this part specifies that the decision of the Director shall be final and conclusive, any person aggrieved under these regulations may request a hearing. Procedures for hearings shall be conducted in accordance with the Administrative Procedure Act (APA), 1 CMC 9101, et seq., and shall be conducted in front of the Director, unless such grievance concerns a decision by the Director, in which case the hearings shall be conducted in front of the Secretary.

Modified, 1 CMC 3806(d), (g).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: The Commission changed Procedures to Procedure to correct a manifest error.

**Subpart K - Cartage**

**70-10.1-1078 Licensed and Bonded Cartage**

- (a) The cartage of merchandise entered for warehouse shall be done by
- (1) Cartmen appointed and licensed by the Director; and
  - (2) Carriers designated to carry bonded merchandise.
- (b) Such cartmen and carriers shall give bond, in a penal sum to be fixed by the Department, for the protection of the CNMI against any loss of, or damage to, the merchandise while being so carted and necessary for the protection of the CNMI revenue or to assure compliance with any provision of law, regulation, or instruction which the Secretary or the Department may be authorized to enforce. Such cartmen and carriers shall also be in compliance with all applicable environmental laws and regulations concerning the transport of hazardous materials.

Modified, 1 CMC 3806(f).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

**70-10.1-1080 Prohibition on Operating Bonded Warehouses**

Persons engaged in the cartage, inland freight trucking, common carrier, unloading, or transportation of merchandise from importation are prohibited from being licensed bonded warehouse operators, either directly or indirectly.

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004).

**Part 1100 - Miscellaneous Provisions**

**70-10.1-1101 Severability**

If any provision of the regulations in this subchapter shall be held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations shall not be affected thereby.

Modified, 1 CMC 3806(b), (d).

History: Amdts Adopted 26 Com. Reg. 23009 (Oct. 26, 2004); Amdts Proposed 26 Com. Reg. 23010 (Aug. 26, 2004); Amdts Adopted 25 Com. Reg. 21471 (Nov. 17, 2003); Amdts Proposed 25 Com. Reg. 20833 (Aug. 22, 2003); Adopted 19 Com. Reg. 15155 (Feb. 15, 1997) (superceding all rules and regulations prior to adoption); Proposed 18 Com. Reg. 14745 (Dec. 15, 1996); Adopted 17 Com. Reg. 13538 (June 15, 1995) (superceding all rules and regulations prior to adoption); Proposed 17 Com. Reg. 13456 (May 15, 1995).

Commission Comment: The 2003 amendments contained an identical severability provision applicable to part XI, codified at part 900. See 25 Com. Reg. at 20849 (Aug. 22, 2003).

The 2004 amendments contained a severability provision applicable to part XII, codified at part 1000 as follows:

Section 4331.1 Severability

Should any provision of these regulations or its application to any person or circumstance be declared unconstitutional or invalid by a court of competent jurisdiction, the remaining portion of the regulations and/or the application of the affected provision to other persons or circumstance shall not be affected thereby.

See 26 Com. Reg. at 23034 (Aug. 26, 2004).



Commonwealth of the Northern Mariana Islands

OFFICE OF THE GOVERNOR

Bureau of Environmental and Coastal Quality

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Frank M. Rabauliman  
Administrator

Ray S. Masga  
Director, DEQ

Janice E. Castro  
Acting Director, DCRM

**PROPOSED NEW CNMI AIR POLLUTION CONTROL REGULATIONS**

**INTENDED ACTION TO PROPOSE NEW REGULATIONS:** The Commonwealth of the Northern Mariana Islands, Office of the Governor, Bureau of Environmental and Coastal Quality (BECQ) intends to propose new Air Pollution Control Regulations, and repeal the prior regulations codified NMIAC Chapter 65-10, pursuant to the procedures of the Administrative Procedure Act, 1 CMC §§ 9102 and 9104(a). The Regulations would become effective 10 days after compliance with 1 CMC §§ 9102 and 9104(a). 1 CMC § 9105(b).

**AUTHORITY:** The Administrator of BECQ is empowered by the Legislature to adopt rules and regulations for the administration and enforcement of the Commonwealth Environmental Protection Act. 2 CMC § 3122.

**THE TERMS AND SUBSTANCE:** The proposed new Air Pollution Control Regulations are for maintaining and achieving National Ambient Air Quality Standards (NAAQS) under the Clean Air Act, 42 U.S.C. §§ 7401, et seq. (CAA), for criteria air pollutants considered harmful to public health and the environment. Also, the regulations will provide for compliance in the CNMI with the New Source Performance Standards (NSPS) and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) under the CAA. The CNMI shall permit minor air pollution sources under these regulations. Major sources shall be permitted by the United States Environmental Protection Agency (USEPA).

**THE SUBJECTS AND ISSUES INVOLVED:**

1. Air permitting requirements for major and minor sources.
2. Air permitting requirements for major and minor hazardous emission sources.
3. Air permit application, reporting, compliance, and enforcement procedures.
4. Air pollution standards for fugitive dust, open burning, noxious and deleterious emissions, and emissions from gasoline and diesel powered vehicles on highways.

**DIRECTIONS FOR FILING AND PUBLICATION:** These Proposed Regulations shall be published in the Commonwealth Register in the section on proposed and newly adopted regulations (1 CMC § 9102(a)(1)) and posted in convenient places in the civic center and in local government offices in each senatorial district, both in English and in the principal vernacular. 1 CMC § 9104(a)(1)

**TO PROVIDE COMMENTS:** Send or deliver your comments to Ray Masga, Director, Division of Environmental Quality, BECQ, *Re: Proposed New Air Pollution Control Regulations*, at the above address or to the above fax number or email: raymasga@becq.gov.mp. Comments are due within 30 days from the date of publication of this notice. Please submit your data, views or arguments. 1 CMC § 9104(a)(2)

These proposed regulations were approved by the Acting Administrator on September \_\_\_\_\_, 2017.

Submitted by:   
RAY S. MASGA  
Acting Administrator  
CNMI Bureau of Environmental & Coastal Quality

Date: 9/21/17

Received by:   
SHIRLEY P. CAMACHO-OGUMORO  
Governor's Special Assistant  
for Administration

Date: 9/28/17

Filed and Recorded by:   
ESTHER S.N. NESBITT  
Commonwealth Register

Date: 09.28.2017

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

Dated this 28 day of September, 2017.

  
EDWARD MANIBUSAN  
Attorney General





# Commonwealth of the Northern Mariana Islands

## OFFICE OF THE GOVERNOR

### Bureau of Environmental and Coastal Quality

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[www.deq.gov.mp](http://www.deq.gov.mp) and [www.cem.gov.mp](http://www.cem.gov.mp)



Ralph DLG. Torres  
Governor

Victor B. Hocog  
Lt. Governor

Frank M. Rabauliman  
Administrator

Ray S. Masga  
Director, DEQ

Janice E. Castro  
Acting Director, DCRM

## NUEBU NA MAPROPONIN AREKGLAMENTU PUT AREKGLUN INAPLACHA' I AIRI

### MA INTENSIONA NA AKSION PARA I NUEBU NA MAPROPONIN AREKGLAMENTU: I

Gubietnamentun Islan Sankattan na Marianas, Ofisinan i Maga'lâhi, "Bureau of Environmental and Coastal Quality (BECQ)", ha hasayaihun osino ha intensiona para u proponi nuebu na Arekglun Inadahin Inapalacha' i Airi (Air Pollution Control Regulations), ya gi i mismu tiempu hu punu' i alacha na arekglamentu ni gaigi gi "NMIAC Chapter 65-10", sigun i ginagagão gi "Administrative Procedure Act (APA), 1 CMC §§ 9102" yan "9104 (a)". Esti siha na arekglamentu para u ifektibu osino aplikãppli dies (10) dihas dispues di makumpli i "1 CMC §§ 9102" yan i "9104 (a)", yan loku' i "1 CMC § 9105 (b)".

**ATTURIDÁT:** I Lehislatura ha nã'i i Ma'gas (osino Administradot) i "BECQ" pudet ni para u aprueba i arekglamentu osino regulasion siha para i ma-atministra yan i ma-enfuetsan i "Commonwealth Environmental Protection Act", 2 CMC § 3122".

**I ALIMENTU YAN I SUSTANSIAN AREKGLAMENTU:** I nuebu na mapropo ni na arekglamentu siha lâ'iyi macho'gui kosaki umaasigura na matatiyi yan makumpli siha i katkuet ginagagão na u masuheta yan u mapruhibi maskiseha hãfa siha na cho'chu' osino prubidu na kosas ni siña makunsidera kumu na'malangu kontra i hinemlu' i taotao, i tanu', i tasi, yan i airi sigun i "National Ambient Air Quality Standards (NAAQS)" gi hãlum i lain Fiderãt gi "Clean Air Act, 42 U.S.C. §§ 7401, et seq." Loku' i, arekglamentu siha para u prubiniyi tiempu para u aplikãppli giya Sankattan na Marianas i nuebu na arekglamentu tãt kumu i "New Source Performance Standards (NSPS) yan i "National Emission Standards for Hazardous Air Pollutants (NESHAPS) gi halum i "CAA". I Sankattan na Marianas enkatgão yan gai atturidãt na debi u aprueba i man dikiki' na aplikasion siha ni tineteka' put inaplacha' i airi sigun gi esti siha na arkeglamentu. Gi mismu tiempu i Fidirãt era i "United States Environmental Protection Agency (USEPA)" enkatgão yan gai atturidãt na debi u aprueba i man dãngkulu na aplikasion siha ni tineteka' put inaplacha' i airi. mahãfut na tãngki siha.

### I MAÑASAONÃO SIHA NA ASUNTU:

1. I ginagagão na pãtti put man dikiki' pat man dãngkulu na kosas kontra i ginasgas i airi.
2. I ginagagão na pãtti put man dikiki' pat man dãngkulu na bininão na linagnus ãsu ginin mãkina pat katkuet manera kontra i ginasgas i airi.
3. Aplikasion, ripot, kinumpli, yan inenfuetsan arekglamentu pot ginasgas i airi.
4. Arekglu put prubidu na potbus (fugitive dust), mañonggin atbettu i airi, estotbão yan bininão na linagnus ãsu ginin katkuet mãkina pat manera, yan linagnus ãsu ginin mãkina siha ni nina'fanlãlã'la' ginin gasolina yan "diesel" ni manmaloloffan gi challan pupbliku.

**AREKGLAMENTU POT "FILING" YAN "PUBLICATION":** Esti i nuebu na manmaproponi na arekglamentu siha debi umapublika gi "Commonwealth Register" gi sesksiona put manmaproponi yan nuebu namanma adãpta na arekglamentu (1 CMC § 9102(a)(1)) yan u fanma pega gi katkuet na sagan publika gi kada' Isla gi finu' CHamoru, Refaluwaasch, pat English (1 CMC § 9104(a)(1)).

**PARA MANNA'HÁLUM FINIHU:** Na'hãnao pat na'hálum finihu quattu as Ray S. Masga, i Ma'gas DEQ, *Re: Proposed New Air Pollution Control Regulations*, gi sanhilu' na "address" pat i sanhilu' na "Fax number" guini pat "Email gi: [storagetankspesticides@becq.gov.mp](mailto:storagetankspesticides@becq.gov.mp). Todu finihu debi ufanhálum gi hálum trenta dias (30 days) ginin i fecha ni mapublika esti na nutisia (1 CMC § 9104(a)(2)).

Esti na priniponin nuebu na arekglamentu inaprueba ni "BECQ Acting Administrator" gi Septembri \_\_\_\_, 2017.

Nina'hálum as:   
RAY S. MASGA  
Acting Administrator  
CNMI Bureau of Environmental & Coastal Quality

9/21/17  
Fecha

Rinisibi as:   
SHIRLEY P. CAMACHO-OGUMORO  
Governor's Special Assistant  
for Administration

9/28/17  
Fecha

Pine'lu yan Rinihista as:   
ESTHER SN. NESBITT  
Commonwealth Register

09.28.2017  
Fecha

Sigun i 1 CMC § 2153 (e) (inaprueban Abugãdu Hinerãt ni regulasion siha na para u macho'gui kumu fotma) yan 1 CMC § 9104 (a) (3) (inahentan maprueban Abugãdu Hinerãt) i manmaproponi na regulasion siha guini ni mantinilaika yan manmaaprueba kumu futmãt yan suficiente ligãt ginin i CNMI Abugãdu Hinerãt yan debi na umapublika, 1 CMC § 2153 (f) (publikasion arekglamentu yan regulasion siha).

Ma fecha gi 28 Septembri na diha, 2017.

  
EDWARD MANIBUSAN  
Attorney General