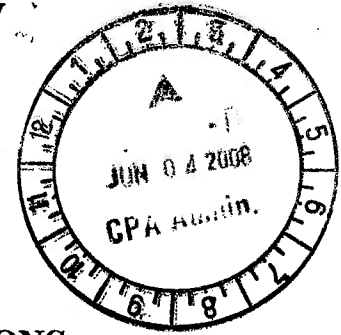




COMMONWEALTH PORTS AUTHORITY

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PUBLIC NOTICE OF EMERGENCY REGULATIONS AMENDING THE RULES AND REGULATIONS OF THE COMMONWEALTH PORTS AUTHORITY RE:

FEES AND CHARGES FOR INCINERATION AND AIRCRAFT WASTE HANDLING SERVICES AT THE SAIPAN INTERNATIONAL AIRPORT INCINERATOR AND TRITURATOR

EMERGENCY ADOPTION AND IMMEDIATE EFFECT: The Commonwealth Ports Authority, by and through its Acting Executive Director finds as follows:

1. The attached rules and regulations regarding the fees and charges for incineration services and for aircraft waste handling services at the Saipan International Airport shall be adopted immediately on an emergency basis because the public interest so requires, for the reasons stated below (1 CMC § 9104(b), (c); 1 CMC § 9105(b)(2); and
2. The same Rules and Regulations shall be adopted as permanent regulations pursuant to the attached Notice of Proposed Rules and Regulations and the Administrative Procedure Act, 1 CMC § 9104(b); and
3. The fee charges for incineration and aircraft waste handling herein are also authorized by the Airline Use Agreement (“AUA”) governing each signatory airline to CPA’s use of its facilities at Saipan International Airport.

AUTHORITY: Pursuant to 2 CMC 2122 (g) CPA has the statutory authority to determine the charges or rentals for the use of any property under its management and control, and the terms and conditions under which the property may be used.

Charges shall be reasonable and uniform for the same class of service, and established with due regard to the value of the property and improvements used and the expense of the operation of the authority. The Authority shall have and may enforce liens to enforce the payment of any such charges through appropriate judicial proceedings. The right to levy charges or rental for the use of the property under its management shall be exclusively that of the Authority and all such charges and rentals as well as other revenues of the authority shall be and remain revenues of the Authority to be applied as herein set forth.

Pursuant to 2 CMC § 2141 the Authority may promulgate, adopt and enforce appropriate regulations based upon Federal Aviation Authority and the Authority’s own

safety requirements to prevent hazards and obstructions which may interfere with the landing or takeoff of aircraft from any airport or which may interfere with the mooring, loading or unloading by any seacraft from any sea port owned or operated by the authority within the Commonwealth. To such end, all appropriate boards, commissions, the Governor, and other agencies of the government shall cooperate with the Authority in coordinating their actions, plans and programs, and in enforcing such appropriate regulations. Source: PL 2-48, § 24.

Pursuant to 2 CMC § 2142 rules and regulations shall be in full force and effect 30 days after the publication of the notice hereby required, and ignorance thereof is not a defense to a prosecution for the enforcement of a penalty. After required publication, the rules and regulations shall be judicially recognized by the courts as valid civil ordinances of the Commonwealth. Source: PL 2-48, § 17.

Pursuant to 2 CMC § 2143 any person substantially interested or affected in his or her rights as to person or property by a rule or regulation adopted by the authority may petition the authority for a reconsideration of the rule or regulation, or for an amendment, modification, or waiver thereof. The petition shall set forth a clear statement of the facts and grounds upon which reconsideration, amendment, modification, or waiver is sought. The authority shall grant the petitioner a public hearing within 30 days after filing the petition and the authority's decision upon the petition shall be publicly released not more than 20 days after the final public hearing held upon the petition. Source: PL 2-48, § 18.

Pursuant to 2 CMC § 2144 in addition to the notice of adoption of rules or regulations relative to civil penalties, a substantive statement shall be published, in condensed form, along with the notice, so as to afford an intelligent direction of the mind to the act forbidden by the civil rules or regulations. One notice may embrace any number of rules and regulations. The notice must advise that breach of the particular rules or regulations will subject the violator to a civil penalty as set by the board in the adoption of the rules and regulations. The notice must also state that the full text of the rules and regulations are on file at the principal office of the authority, where the same may be read by any interested person during reasonable business hours.

Pursuant to 2 CMC § 2146 the CPA Executive Director shall enforce rules and regulations of the authority governing the assessment of civil penalties.

- (a) The rules and regulations shall provide for a reasonable time, not less than 10 days, for due notice to the person assessed of the nature of the violation committed, and during which the person assessed may answer the assessment by denying liability, by offering a compromise to the executive director, or by paying the assessment.
- (b) The rules and regulations shall also provide notice that failure to pay the final civil penalty assessed by the time set in the rules and regulations may

result in collection of the penalty through the Commonwealth Trial Court or the U.S. District Court.

In addition to CPA's statutory authority through its enabling act, the Administrative Procedure Act provides that an agency may adopt an emergency regulation upon fewer than 30 days' notice if it states its reasons in writing:

If an agency finds that the public interest so requires, or that an imminent peril to the public health, safety, or welfare requires adoption of a regulation upon fewer than 30 days' notice, and states in writing its reasons for that finding, it may, with the concurrence of the Governor, proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency regulation. The regulation may be effective for a period of not longer than 120 days, but the adoption of an identical regulation under subsections (a)(1) and (a)(2) of this section is not precluded.

(c) No regulation adopted is valid unless adopted in substantial compliance with this section. A judicial proceeding for a declaratory judgment to contest any regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

1 CMC § 9104(b), (c).

TERMS AND SUBSTANCE OF FEE CHARGES: These Rules and Regulations provide for the immediate increase of fees that will allow CPA to recover its costs for incineration of contraband and prohibited goods including Foreign Vessel Waste at its incineration facility subject to the terms and conditions of U.S. EPA RCRA Unilateral Administrative Order No. 7003-09-0001 and Order on Consent as well as applicable Federal and CNMI law.

CPA is compelled by its Bond Indenture Agreement with the Bank of Guam for the 1998 Airport Revenue Bonds and Seaport Revenue Bonds pledging its revenue from its operations toward debt service.

SUBJECTS AND ISSUES INVOLVED: FEES AND CHARGES BY CPA: There are two CPA operations to which the charges below apply:

- 1) The Airport Incinerator Facility handling Foreign Vessel Waste from foreign vessels and airplanes under the existing EPA Administrative Order and any subsequently approved incineration operation by CPA; and
- 2) The triturator treatment facility at the Saipan International Airport handling aircraft waste from all aircraft operations.

ADOPTION OF EMERGENCY REGULATIONS FOR 120 DAYS: The CPA Board has

previously approved the Airport Incinerator fees and rates on November 30, 2006. CPA has not previously imposed fees for the Triturator services which it does so now. Following the release of the FY 2006 Audit in January, 2008, the Bond Indenture Agreement compels imposition of those rates for cost recovery purposes.

COMPELLING REASONS FOR EMERGENCY ADOPTION: The CPA Board and Management finds that the public interest compels the adoption of these regulations on an emergency basis for the following reasons:

1. CPA is directed by statute to determine the charges or rentals for the use of any property under its management and control, and the terms and conditions under which the property may be used.
2. CPA is authorized to pledge its assets and revenues toward revenue bonds for the construction, renovation and development of its facilities.
3. In 1998, CPA and the Bank of Guam, as the Bond Trustee, signed the Airport and Seaport Revenue Bonds committing CPA's revenue to service the principal and interest in return for financing for airport and seaport construction and renovation. These are two separate bonds.
4. The Bond Indenture Agreement requires CPA to have sufficient revenue to service the debt. Section 6.11(b) of the Bond Indenture Agreement requires CPA to have a debt service ratio of net revenues of 1.25 at all times. Whenever that ratio falls below the established rate, CPA is compelled to hire a Bond Consultant who would undertake a rate study and whose recommendations shall be implemented by CPA.
5. In June 2006 CPA commissioned Ricondo & Associates as a bond consultant to undertake a rate study following the pullout of Japan Airlines in October 2005 as well as to revise the Airline Use Agreements. In that report Ricondo recommended increases in the incineration and triturator rates for cost recovery in operations.
6. The US EPA Administrative Order also compelled the purchase of a new incinerator for installation by July 2006 which CPA completed. CPA has incurred substantial expenses and costs for environmental consulting services for EPA compliance, all of which remains ongoing and pending approval by EPA and DEQ.
7. Following the standard form of publishing notice and comment is countered by CPA's enabling act regarding regulations and fees and would further delay the implementation of these rates. The Bond Trustee has impressed upon CPA's Board the urgent need to implement all cost recovery in the form of rate increases and charges including non-aviation services. These rates are therefore necessary.

8. Any further delay in cost recovery for any rates or fees would threaten the public welfare with the specter of a default and acceleration of the balance of \$17 million due and/or a takeover in management of the Saipan International Airport resulting in increased fees more detrimental to the public.
9. Presently CPA's fees are insufficient as recommended by its Bond Consultant as to cost recovery and these fees were approved by the CPA Board on November 30, 2006 which are being implemented herein as recommended by CPA's Bond Consultant whose recommendations shall be implemented pursuant to Section 6.11(b) of the Bond Indenture when the debt service ratio drops to below 1.25. As of the release of the FY 2006 Audit, CPA's debt service ratio is now at -.17 and so CPA must immediately implement cost recovery measures.


DIRECTIONS FOR FILING AND PUBLICATION: These Proposed Rules and Regulations shall be published in the Commonwealth Register in the section on emergency and proposed regulations 1 CMC § 9102(a)(1) and posted at each CPA office section including the Airport Administration Office and Port of Saipan Office; in convenient places in the Courthouse; in local government offices; and in each senatorial district.

CPA shall take appropriate measures to make these Rules and Regulations known to the persons who may be affected by them including all vessel agents; Port of Saipan vessels; tenants at the Port of Saipan; all Foreign Vessel operators seeking incineration services; all Signatory Airlines pursuant to the AUA of each carrier; and all law enforcement agencies including the Drug Enforcement Administration; Department of Public Safety; and Division of Customs.

IMMEDIATE EFFECT: These emergency rules and regulations become effective immediately upon filing with the Commonwealth Register and delivery to the Governor. 1 CMC § 9105(b)(2). This is because CPA has found that this effective date is required by the public interest or is necessary because of imminent peril to the public health, safety or welfare.

PUBLIC COMMENTS: No comments are required for these emergency rules and regulations. However, the Notice of Proposed Rules and Regulations and CPA's statutory requirements set forth above specify comment procedures. Please see the notice regarding these emergency regulations being presented as proposed regulations in Part 40 of the Commonwealth Administrative Code 2008.

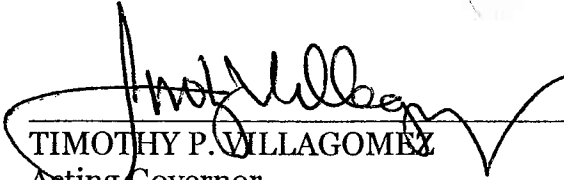
SUBMITTED BY:



LEE CABRERA
Acting Executive Director CPA

22 May 2008
Date

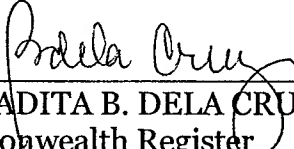
CONCURRED BY:


TIMOTHY P. VILLAGOMEZ
Acting Governor

MAY 27 2008

Date

FILED AND RECORDED
BY:

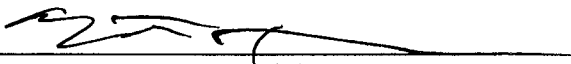

BERNADITA B. DELA CRUZ
Commonwealth Register

June 3, 2008

Date

Pursuant to 1 CMC § 2153(e) and 1 CMC § 9104(a)(3) (approval by Attorney General required) 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.

Date: May 26, 2008


MATTHEW T. GREGORY
Attorney General

Pursuant to Public Law 2-48 codified at 2 CMC § 2101 *et. seq.* (the Commonwealth Ports Authority Act); the Commonwealth Ports Authority Airport Rules and Regulations specifically at Part 12 (Schedule of Fees and Charges); Article 7 of the Airline Use Agreements for Signatory Airlines specifically Section 7.09; Executive Order Nos. 08-04 and 05¹; Governor's Directive Nos. CPA 08-01 (Implementation of Rate Increases and Fees for CPA) and CPA 08-02 (Repeal of CPA Board Resolution No. 2007-004 (Airline Incentive Program)); and the 1998 Airport Bond Indenture Agreement at Section 6.11, the Commonwealth Ports Authority through its Acting Executive Director hereby gives notice of the following:

PART 12 OF THE CPA AIRPORT RULES AND REGULATIONS ARE HEREBY AMENDED TO ADD THE FOLLOWING FEES AND CHARGES:

SIGNATORY AIRLINES/ VESSELS (ENTERING PORT OF SAIPAN):

1. AIRPORT INCINERATOR FACILITY CHARGES:

For every request for incineration of permissible Foreign Vessel Waste or Contraband Prohibited Goods (controlled substances or seized contraband) as permitted by the Division of Environmental Quality and/or the U.S. Environmental Protection Agency at CPA's Incinerator Facility the following charges shall apply:

- A. Incinerator Base Fee: \$0.41 per pound
 - B. Incinerator Fuel Rate: \$0.54 per pound
 - C. Incinerator Surcharge Rate: \$0.20 per pound
- Total Initial Operating Incineration Charge: \$1.15 per pound

The Incinerator Fuel and Surcharge Rates shall be fluctuating rates to be established at the first of each month by the Commonwealth Ports Authority Comptroller and published to all signatory airlines and port operators as well as to the general public. The Fuel and Surcharge Rates shall take into consideration the following criteria:

- I. Actual monthly charges for fuel costs;
- II. Actual manpower services/labor hours of operations;
- III. Utility charges for incineration operation;
- IV. Actual monthly weight of airline and non-airline incinerated waste;

¹ Declaration of State of Disaster Emergency: Commonwealth Ports Authority's Approach of Technical Default on \$20 Million Indenture (Executive Order No. 08-04); and Reorganization Plan No. 02 of 2008 (Executive Order No. 08-05).

- V. Actual costs for environmental compliance with U.S. EPA Administrative Order and any compliance requirements by the CNMI Division of Environmental Quality.

NON-SIGNATORY AIRLINES

Pursuant to Section 12 Part 12 of the Authority's Rules & Regulations, for non-signatory airlines, the above Incinerator rates as it applies to non-signatory airlines shall be multiplied by a factor of 1.5.

2. AIRPORT TRITURATOR WASTE HANDLING SERVICES

TRITURATOR HANDLING/PROCESSING FEES:

For every aircraft waste handling service provided by CPA to every signatory airline for the CPA Triturator for foreign vessel waste, the following charges shall apply:

- A. Waste Disposal Fee: \$0.05 per gallon
- B. Water Usage Fee: \$0.05 per gallon

NON-SIGNATORY AIRLINES:

Pursuant to Part 12 Section 12, the above Triturator rates as it applies to non-signatory airlines shall be multiplied by a factor of 1.5.