

TITLE 40

COMMONWEALTH PORTS AUTHORITY

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CHAPTER 40-10 AIRPORT DIVISION

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Subchapter Authority: 2 CMC § 2122(j).

Subchapter History: Amdts Emergency 30 Com. Reg. 28519 (June 27, 2008) (effective for 120 days from June 3, 2008); Amdts Adopted 26 Com. Reg. 21710 (Jan. 22, 2004); Amdts Proposed 25 Com. Reg. 21465 (Nov. 17, 2003); Amdts Adopted 23 Com. Reg. 18385 (Sept. 24, 2001); Amdts Proposed 23 Com. Reg. 17826 (Apr. 23, 2001); Amdts Adopted 23 Com. Reg. 17842 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17614 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999); Amdts Adopted 21 Com. Reg. 16803 (June 23, 1999); Amdts Proposed 21 Com. Reg. 16693 (Apr. 19, 1999); Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998);* Amdts Adopted 19 Com. Reg. 15381 (May 15, 1997); Amdts Proposed 19 Com. Reg. 14878 (Jan. 15, 1997); Amdts Adopted 16 Com. Reg.

11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

*A notice of adoption for the 1998 proposed amendments was never published.

Commission Comment: On May 12, 2008, Governor Benigno R. Fitial issued Executive Order No. 2008-3 (Reorganization Plan No. 1 of 2008). In Executive Order No. 2008-3, Governor Fitial allocated CPA to the Office of the Governor. 30 Com. R. 28757 (September 25, 2008). On May 13, 2008, Governor Fitial signed Executive Order No. 2008-4 and declared a state of emergency “due to the inability of [CPA] to avoid technical default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds.” 30 Com. Reg. 28760 (September 25, 2008). On May 13, 2008, Governor Fitial issued Executive Order No. 2008-5 (Reorganization Plan No. 2 of 2008). In Executive Order No. 2008-5, Governor Fitial superseded Executive Order No. 2008-03. 30 Com. Reg. 28762 (September 25, 2008). On June 12, 2008, Governor Fitial issued Executive Order No. 2008-6, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-4. 30 Com. Reg. 28765 (September 25, 2008). On July 14, 2008, Governor Fitial issued Executive Order No. 2008-7, declared that a state of emergency still existed “[u]ntil a sufficient number of the appointments [on the board of directors of CPA] have been made and consented to by the Senate.” On August 13, 2008, Governor Fitial issued Executive Order No. 2008-11, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 CR 28779 (Sept. 2008). On September 3, 2008, Governor Fitial issued Executive Order No. 2008-12, which terminated the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 CR 28782 (Sept. 2008).

PL 2-48, the “Commonwealth Ports Authority Act,” codified as amended at 2 CMC §§ 2101-2190, took effect October 8, 1981. It was based on the “Mariana Islands Airport Authority Act” enacted by the Congress of Micronesia as PL 6-58. See the commission comment to 2 CMC § 2101. PL 2-48 created the Commonwealth Ports Authority to implement its provisions and operate the ports of the Commonwealth. See 2 CMC §§ 2121-22. Transition provisions of PL 2-48 provided for the transfer of the Mariana Islands Airport Authority to the newly created Commonwealth Ports Authority. See 2 CMC §§ 2181, et seq.

Executive Order 94-3 (effective August 23, 1994), reprinted in the commission comment to 1 CMC § 2001, reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. Executive Order 94-3 § 304(a) allocated the Commonwealth Ports Authority to the Department of Public Works for purposes of administration and coordination. PL 11-109 (effective December 21, 1999) vacated section 304(a) in its entirety and reenacted and reinstated all provisions of 2 CMC, division 2, chapter 1, 2 CMC §§ 2101-2190, in effect immediately prior to the effective date of Executive Order 94-3. PL 11-109 §§ 2(b) and 4.

The Commonwealth Ports Authority Act contains special provisions related to rules and regulations. See 2 CMC §§ 2141-2146.

The precursor to the Commonwealth Ports Authority with regard to airport regulation in the Commonwealth was the Mariana Islands Airport Authority (MIAA). The MIAA published several amendments to earlier Trust Territory airport rules and regulations as follows:

Amdts Proposed 3 Com. Reg. 1233 (May 20, 1981) (amending earlier regulations); Amdts Proposed 1 Com. Reg. 375 (July 16, 1979);* Adopted 1 Com. Reg. 53 (Nov. 16, 1978); Proposed 1 Com. Reg. 39 (Oct. 16, 1978) (amending earlier regulations promulgated by the Trust Territory of the Pacific Islands government).

*A notice of adoption for the July 1979 proposed amendments was never published. The MIAA May 1981 proposed amendments were adopted by the Commonwealth Ports Authority in 1983.

After its creation in 1981, the Commonwealth Ports Authority continued to amend the existing regulations as follows:

Amdts Adopted 12 Com. Reg. 7199 (July 15, 1990); Amdts Proposed 12 Com. Reg. 6871 (Apr. 15, 1990); Amdts Adopted 10 Com. Reg. 5433 (Jan 18, 1988); Amdts Proposed 9 Com. Reg. 5279 (Nov. 15, 1987); Amdts Adopted 9 Com. Reg. 4923 (Apr. 15, 1987); Amdts Proposed 9 Com. Reg. 4911 (Feb. 17, 1987); Amdts Proposed 8 Com. Reg. 4834 (Dec. 16, 1986);* Amdts Adopted 8 Com. Reg. 4392 (June 3, 1986); Amdts Proposed 8 Com. Reg. 4328 (Apr. 18, 1986); Amdts Adopted 7 Com. Reg. 4157 (Dec. 17, 1985); Amdts Proposed 7 Com. Reg. 4153 (Nov. 20, 1985); Adopted Amdts 6 Com. Reg. 2863 (June 15, 1984); Amdts Proposed 6 Com. Reg. 2742 (May 15, 1984); Amdts Adopted 6 Com. Reg. 2745 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2707 (Apr. 15, 1984); Amdts Adopted 6 Com. Reg. 2710 (Apr. 15, 1984); Amdts Proposed 6 Com. Reg. 2566 (Feb. 15, 1984); Amdts Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Amdts Proposed 5 Com. Reg. 2165 (May 27, 1983); Amdts Proposed 4 Com. Reg. 1745 (Dec. 10, 1982); Amdts Proposed 3 Com. Reg. 1233 (May 20, 1981) (proposed by the MIAA); Amdts Adopted 4 Com. Reg. 1753 (Dec. 10, 1982); Proposed Amdts 4 Com. Reg. 1453 (May 24, 1982).

*A notice of adoption for the December 1986 proposed amendments was never published.

The Commonwealth Ports Authority published a complete revision of the Airport Rules and Regulations in 1992. The history sections in this subchapter date from that publication and adoption.

On May 12, 2008, Governor Benigno R. Fitial issued Executive Order No. 2008-3 (Reorganization Plan No. 1 of 2008). In Executive Order No. 2008-3, Governor Fitial allocated CPA to the Office of the Governor. 30 Com. R. 28757 (September 25, 2008).

On May 13, 2008, Governor Fitial signed Executive Order No. 2008-4 and declared a state of emergency “due to the inability of [CPA] to avoid technical default on the March 1, 1998 indenture on the CPA Airport Revenue Bonds.” 30 Com. Reg. 28760 (September 25, 2008). On May 13, 2008, Governor Fitial issued Executive Order No. 2008-5 (Reorganization Plan No. 2 of 2008). In Executive Order No. 2008-5, Governor Fitial superseded Executive Order No. 2008-03. 30 Com. Reg. 28762 (September 25, 2008). On June 12, 2008, Governor Fitial issued Executive Order No. 2008-6, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-4. 30 Com. Reg. 28765 (September 25, 2008). On July 14, 2008, Governor Fitial issued Executive Order No. 2008-7, declared that a state of emergency still existed “[u]ntil a sufficient number of the appointments [on the board of directors of CPA] have been made and consented to by the Senate.” On August 13, 2008, Governor Fitial issued Executive Order No. 2008-11, which renewed the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 CR 28779 (Sept. 2008). On September 3, 2008, Governor Fitial issued Executive Order No. 2008-12, which terminated the declaration of a state of disaster set forth in Executive Order No. 2008-7. 30 CR 28782 (Sept. 2008).

Part 001 - General Provisions

§ 40-10.1-001 Authority

The rules and regulations in this subchapter are promulgated by the Commonwealth Ports Authority in accordance with 2 CMC § 2122(j) and shall have the force and effect of law.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-005 Purpose

The purpose of this subchapter is to provide for and to insure the orderly, safe, and sanitary operation of airports in the Commonwealth of the Northern Mariana Islands under the jurisdiction and control of the Commonwealth Ports Authority.

Modified, 1 CMC § 3806(d).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-010 Definitions

The following terms, as used in this subchapter, shall have the following meanings:

- (a) “Aircraft” shall mean and include any and all contrivances, now or hereafter used for the navigation of or flight in air or space, including, but not limited to, airplanes, airships, dirigibles, helicopters, gliders, amphibians, and seaplanes.
- (b) “Authority” shall mean the Commonwealth Ports Authority.
- (c) “Airport” shall mean all publicly owned airports in the Commonwealth of the Northern Mariana Islands, together with all related facilities. On Saipan this includes Saipan International Airport, formerly known as “Isley Field.” On Tinian it shall mean West Tinian International Airport. On Rota it shall mean the Rota International Airport. On Pagan it shall mean the Pagan Airport.
- (d) “Executive Director” shall mean the Executive Director of the Authority or his duly authorized representative.
- (e) “Federal Aviation Regulations” shall mean the United States Federal Aviation Regulations, as currently amended and promulgated by the United States Federal Aviation Administration.
- (f) “Fuel handling” shall mean the transportation, delivery, fueling, and draining of fuel or fuel waste products.
- (g) “Fuel storage area” shall mean and include any portions of the airport designated temporarily or permanently by the Authority as areas in which gasoline or any other type of fuel may be stored, including but not limited to, gasoline tank farms and bulkheads, piers, or wharves at which fuel is loaded.
- (h) “Operational area” shall mean any place on the airport not leased or demised to anyone for exclusive use, and not a public area, highway, or public vehicular area; but shall include the runways, public taxiways, public ramp and apron areas, public cargo ramp and apron areas, public aircraft parking and storage areas, and fuel storage areas.
- (i) “Operational agreement” shall mean an airline use agreement entered into by the Authority and an aircraft operator.
- (j) “Operator” shall mean the owner of an aircraft or any person who is using an aircraft for the purpose of operation by himself or his agents.
- (k) “Permission” or “permit” shall mean permission granted by the Executive Director unless otherwise herein specifically provided. “Permission or “permit” whenever required by this chapter shall always mean written permission, except that verbal permission in specific instances may be granted under special circumstances where the obtaining of written permission would not be practicable.
- (l) “Person” shall mean any individual, firm, partnership, co-partnership, corporation, trust association, or company (including any assignee, receiver, trustee, or

similar representatives thereof) or the United States of America, any state or political subdivision thereof, any foreign government, or the United Nations.

(m) “Airport Rules and Regulations” shall mean the rules and regulations in this subchapter and subsequent amendments thereto.

(n) “Public aircraft parking and storage area” shall mean that area of the airport to be used for public aircraft parking and storage space for the parking and storing of aircraft, or for the servicing of aircraft with fuel, lubricants, and other supplies, or for making emergency repairs to aircraft, or for any or all such purposes.

(o) “Public cargo ramp and apron area” shall mean and include any portions of the airport designated and made available temporarily or permanently by the Authority for the loading or unloading of passengers, cargo, freight, mail, and supplies, to and from aircraft, and for performing those operations commonly known as “ramp service,” and for performing inspections, minor maintenance, and other services upon or in connection with aircraft incidental to performing “ramp service,” but shall not mean those areas designated for the storage of cargo, freight, mail, and supplies, nor those areas designated for the purpose of performing fueling and other ramp services, or those areas designated for the purpose of parking operations.

(p) “Public taxiway” shall mean and include any public taxiways designated for the purpose of the ground movement of aircraft on the airport.

(q) “Public vehicular parking area” shall mean and include any portion of the airport designated and made available, temporarily or permanently, by the Authority for the parking of vehicles.

(r) “Runway area” shall mean and include any portion of the paved runway as well as the clear zones and field area to the lateral clearance lines of said runway.

(s) “Sightseeing flights” shall mean flights on which passengers are carried for hire, and which originate and terminate at the airport with no intermediate stops other than emergency stops.

(t) “Vehicles” shall mean and include automobiles, trucks, buses, motorcycles, horse-drawn vehicles, bicycles, push carts, and any other device in or upon or by which any person or property is or may be transported, carried, or drawn upon land, aircraft excluded.

(u) The words “ingress” and “egress” shall refer to the use of an area, or portion of the airport, as a means of going from one place to another without undue delay.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: In subsections (c) and (o), the Commission moved a period and a comma, respectively, inside of the closing quotation marks to correct manifest errors. In subsection (u), the Commission inserted an opening quotation mark before “egress.”

Part 100 - General Operational Rules and Regulations

§ 40-10.1-101 General Rules

(a) All aeronautical activities at the airport, and all flying of aircraft departing from or arriving at the airport, shall be conducted in conformity with applicable provisions of the regulations of the Federal Aviation Administration, the United States Department of Transportation, or any successor agencies.

(b) The owner, operator, pilot, agent, or their duly authorized representatives agree, as a condition of use of the airport, to release and discharge the Authority, its officers, and its employees of and from any liability for any damage which may be suffered by any aircraft and its equipment, and for any personal injury or death, except where such damage, injury, or death is due solely to the negligence of the Authority.

(c) All persons using any part of the airport shall be held liable for any property damage caused by carelessness and negligence on or over the airport, and any aircraft being operated so as to cause such property damage may be retained in the custody of the Authority and the Authority may have a lien on said aircraft until all charges for damages are paid. Any persons liable for such damage agree to indemnify fully and to save and hold harmless the Authority, its directors, its officers, and its employees from claims, liabilities, and causes of action of every kind, character, and nature and from all costs and fees (including attorney’s fees) connected therewith, and from the expenses of the investigation thereof.

(d) The pilot or operator of any aircraft involved in an accident causing personal injury or property damage shall, in addition to all other reports required to be made to other agencies, make a complete report concerning said accident to the office of the Executive Director within 24 hours of the accident. When a written report of an accident is required by the Federal Aviation Regulations, a copy of such report may be submitted to the Executive Director in lieu of the report required above.

(e) Subject to compliance with appropriate Federal Aviation Regulations, the aircraft owner shall be responsible for the prompt removal of all disabled aircraft and/or parts of such aircraft at the airport, as reasonably directed by the Executive Director. In the event of the owner’s failure or refusal to comply with such directions, such disabled aircraft or any and all parts thereof may be removed by the Authority at the owner’s expense and without liability for damage which may be incurred as a result of such removal.

(f) The Executive Director shall have the right at any time to close the airport in its entirety or any portion thereof to air traffic, to delay or restrict any flight or other aircraft, and to deny the use of the airport or any portion thereof to any specified class of aircraft or to any individual or group when the Executive Director considers any such action to be necessary and desirable to avoid endangering persons or property and to be consistent with the safe and proper operation of the airport. In the event the Executive Director believes the condition of the airport to be unsafe for landings or takeoffs, it shall be within his authority to issue, or cause to be issued, a NOTAM (notice to aircraft) closing the airport or any portion thereof.

(g) All aircraft landing or taking off at the airport shall have a properly functioning two-way radio capable of communicating with the airport communication system.

(h) The Executive Director may require from time to time and may designate, at his or her discretion, appropriate locations for the registration of pilots and aircraft using the airport, and such pilots shall comply with the requirements of such registration. The payment of rentals, fees, and charges relating to the use of airport premises and facilities shall be made before takeoff. In lieu of such payment, satisfactory credit arrangements shall be made by the operator of aircraft with the office of the Authority or such office as may be otherwise designated by the Executive Director before the aircraft leaves the airport.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: In subsection (b), the Commission deleted the repeated phrase “discharge the Authority, its officers, and its employees of and from any liability.”

Part 100 was originally sections 1.4 through 1.12 of part 1, entitled “General Provisions.” See 14 Com. Reg. at 9543-47 (Aug. 15, 1992). The Commission redesignated these sections as part 100 and created the part title.

§ 40-10.1-105 Compliance with Rules and Regulations

(a) Any permission granted by the Authority, directly or indirectly, expressly or by implication, to any person or persons, to enter or use the airport, or any part thereof (including aircraft operators, crew members and passengers, spectators, sightseers, operators of pleasure and commercial vehicles, officers and employees of airlines, and any other persons occupying space on or within the airport, persons doing business with the Authority, or at the airport, its lessees, or sublessees and permittees, and any other persons whatsoever) is conditioned upon strict compliance with the rules and regulations in this subchapter.

(b) The Executive Director may, upon notice and for cause consisting of repeated or flagrant violation of this subchapter, terminate the permission or privilege of any person to utilize the airport, and/or disqualify any such person from bidding or submitting a proposal for any concession or contract to be let by the Authority. Such action shall be in addition to any civil penalties which may be assessed under this subchapter. Any person affected by the Executive Director's decision to terminate their permission or privilege may petition the Authority for reconsideration. The petition shall set forth a clear statement of the facts and grounds upon which reconsideration is sought. The Authority shall grant the petitioner a public hearing within 30 days after filing the petition and the Authority's decision shall be publicly released not more than 20 days after the final public hearing held upon the petition.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-110 Commercial Activity

No person shall carry on any commercial activity whatsoever at the Airport without the written consent of the Executive Director.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-115 Sightseeing

No person shall conduct sightseeing flights at the airport, except under a permit from the Executive Director or his duly appointed representative establishing conditions and specifying fees payable to the airport for such privileges. Sightseeing passengers shall not be subject to the fees imposed pursuant to § 40-10.1-1215 of this subchapter.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-120 Parking and Storage of Aircraft

Unless otherwise provided by a lease or other contractual agreement, no person shall use any area of the airport (other than the public aircraft parking and storage areas) for parking and storage of aircraft without the permission of the Executive Director. If, notwithstanding the above prohibition, a person uses such areas for parking or storage as aforesaid, without first obtaining permission, then the Executive Director shall have the authority to order the aircraft removed, or to cause same to be removed and stored, at the

expense of the owner or consignee thereof, without responsibility or liability for damages arising therefrom.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-125 Storage of Cargo, Etc.

Unless otherwise provided by a lease or other contractual agreement, no person shall use any area of the airport for storage of cargo, equipment or any other property without permission of the Executive Director. If, notwithstanding the above prohibitions, a person uses such areas for storage as aforesaid, without first obtaining such permission, then the Executive Director shall have authority to order the cargo or equipment or any other property removed, or to cause the same to be removed and stored, at the expense of the owner or consignee thereof, without responsibility or liability for damages arising therefrom.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-130 Use of Operational Areas

No person shall use or occupy an operational area for any purpose whatsoever, except for a purpose pertaining to the landing, takeoff operations and servicing of aircraft, airline activities associated with aircraft, or governmental agencies in the performance of their functions or for a purpose connected with the maintenance and operation of the airport.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-135 Payment of Charges

(a) No person shall land an aircraft on or take off from airport, or use an operational area, except upon the payment of such fees and charges as may from time to time be approved and published by the Authority, unless such person is entitled to use such area under a lease or other contract providing therefor. Except as otherwise provided therein, any operating rights under a lease or contract shall be null and void if the payment of fees and charges for the use of the airport are more than ninety days in arrears, and any subsequent landing or takeoff of an aircraft from the airport, or use of an operational area,

shall be conditioned upon the payment of such fees and charges at the time of use as provided for in part 1200 hereof.

(b) Except as otherwise specifically provided in an agreement to which the Authority is a party, all fees and charges due to the Authority from any person, arising out of the use and/or occupancy of any airport, shall be due ten days after the delivery of the Authority's invoice. In the event that the Executive Director finds that a particular airline, concessionaire, tenant, or other airport user is habitually late in the payment of invoices, or in the event a particular invoice is not paid within ten days, the Executive Director may, in his sole judgment, and upon notice to the debtor, shorten the time for the payment of future invoices to and including a requirement for payment upon presentation of the invoice.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-140 Commercial Photography

No person shall take still, motion, or sound pictures for a commercial purpose, nor shall they transmit any program for commercial purposes on the airport, without written permission of the Executive Director.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 200 - Operation of Vehicles

§ 40-10.1-201 Required Licenses

No vehicles shall be operated in or upon a public vehicular parking area, or any road within the airport, or upon any of the operational areas of the airport, unless:

(a) The driver thereof is duly authorized to operate such vehicle under the laws of the Commonwealth of the Northern Mariana Islands, except that approved ramp equipment may be operated on the public aircraft area by accredited employees certified by their employer to the Executive Director as qualified to operate such equipment; and

(b) Such vehicle is registered in accordance with the laws of the Commonwealth of the Northern Mariana Islands or is specifically authorized by the Executive Director to be operated on or within the airport, but not on public highways or parking areas.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-205 Obeying Signals and Orders

Every person operating a vehicle in or upon a public vehicular parking area operational area, or any road within the air terminal, must at all times comply with any lawful order, signal, or direction of any authorized representative of the Authority, or of any airport security officer. Whenever traffic is controlled by traffic lights, signs, mechanical or electrical signals, or pavement markings, all such shall be obeyed unless an authorized Authority representative or airport security officer directs otherwise.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-210 Speed Limits

All vehicles operated within the airport shall comply with the speed limits prescribed and posted by the Executive Director. Where no limit is posted, the speed limit in the area shall be twenty-five miles per hour.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-215 Vehicles Within Operational Areas

No vehicle shall be operated within any operational area, except as authorized by the Executive Director, who may require that such vehicles display visible identifying symbols or numbers. The movement of vehicles may be restricted by the Executive Director to specific zones within the operational areas.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-220 Responsibility in Cases of Accidents

In addition to all other requirements of law, the driver of any vehicle involved in an accident within the airport area which results in injury or death to any person or damage

to property, shall make a report to an airport security officer, or police officer assigned to the airport, within twenty-four hours of such accident.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-225 Right-of-way

(a) The driver of a motor vehicle shall, on approaching an intersection, give right-of-way to every vehicle which is approaching to enter said intersection from the main street of entrance or departure to the terminal area whenever traffic is not regulated by traffic signals, signs, or security or police officers.

(b) On approaching a street, intersection, or junction of any road, speed shall be reduced. Likewise, speed shall be reduced on approaching any public conveyance which has stopped to discharge or take on passengers.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-230 Parking

(a) No person shall park a motor vehicle on the airport except in an area specifically designated and posted for parking.

(b) No person shall park a motor vehicle in any area on the airport for a period longer than is prescribed and posted for that space by the Executive Director.

(c) No person shall park a motor vehicle in a restricted or reserved area on the airport unless such person displays, in the manner prescribed by the Executive Director, a parking permit issued by the Executive Director for that area.

(d) No person shall double park a motor vehicle on the roadways of the airport.

(e) No person shall abandon a motor vehicle on the airport. A motor vehicle will be presumed abandoned if it is left parked and unattended for a period greater than forty-eight hours, unless it is parked in a space specifically set aside for parking longer than forty-eight hours. In such event, a motor vehicle shall be presumed abandoned if left unattended for a period twenty-four hours longer than the maximum authorized parking period.

(f) No person shall park a motor vehicle on the airport, in a space marked for the parking of vehicles, in such a manner so as to occupy a part of another marked space.

(g) No person shall leave a motor vehicle unattended or parked on the airport with a key in the ignition switch or the motor running, or a key in the door lock, or with a door open.

(h) No person shall park a motor vehicle at any place on the airport in violation of any sign posted by the Executive Director.

(i) No person shall park a motor vehicle within ten feet of a fire hydrant or in front of a driveway.

(j) Except as otherwise authorized by the Executive Director, no person shall park a motor vehicle for the purposes of cleaning, polishing, or repairing said vehicle except for those minor repairs necessary to remove said vehicle to an authorized area or from the airport.

(k) Every parked motor vehicle shall be parked, when parallel to the roadway, to its extreme right and at a distance of not more than six inches from the sidewalk or promenade, unless the parking space is otherwise marked. The entrance and exit of passengers shall be on the right-hand side of the vehicle.

(l) Public parking shall be permitted for a period of greater than forty eight hours only in those areas designated for extended parking. No person may park a motor vehicle in an extended parking facility unless such person has purchased a permit authorizing the use of the extended parking facility from the Airport Security Office, or other designated location. The fee for an extended parking permit shall be FIVE DOLLARS per day which shall be paid in advance at the time the permit is purchased. The permit shall be displayed on the dashboard of the vehicle at all times while parked in the extended parking facility. In addition to the penalties available under § 40-10.1-255(f) of this section the permittee, or owner, of any vehicle left parked in the extended parking facility shall be subject to a charge of TEN DOLLARS per day for each day, or part of a day, the vehicle remains parked in the facility without a permit or in excess of the permitted period.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-235 Taxicab Operations and Permits

(a) Before being permitted to load passengers at the airport, a taxicab shall:

(1) Be currently licensed as a taxicab by the Bureau of Motor Vehicles and driven by a person with a license properly endorsed for the transportation of passengers for hire pursuant to the laws of the Commonwealth of the Northern Mariana Islands.

(2) Have secured from the Executive Director a current written authorization enabling such loading.

(3) Have paid to the Executive Director the appropriate fees, if any, required for said permit.

(b) Taxicabs shall conduct their business at the airport in a manner and at places to be designated from time to time by the Executive Director by written notice to the permit holders and otherwise in accordance with this subchapter.

(c) All taxicabs shall be stopped or parked in such manner and in such areas as may be designated from time to time by the Executive Director.

(d) Operators of taxicabs shall load passengers at the airport only in designated zones as may be from time to time prescribed in writing by the Executive Director.

(e) Only taxicab operators authorized in writing by the Executive Director may solicit taxi fares on the airport premises; provided, however, that the Executive Director will not issue an exclusive authorization under this subparagraph to any one taxi company or taxi operator; and provided further that solicitation shall be expressly restricted to areas designated by the Executive Director. The term "solicitation" as used in this subparagraph shall be specifically defined to mean the asking of a passenger or other person if he or she desires a taxicab. Upon request, taxicab operators shall courteously inform passengers or other of alternate means of ground transportation, the location, and frequency, if any exists.

(f) Taxicab drivers or any other persons connected therewith shall be specifically prohibited from soliciting taxicab fares on the airport at places other than those designated by the Executive Director. Cruising of taxicabs is prohibited.

(g) Taxicab permits shall be valid for a period of one year commencing at the beginning of the fiscal year of the airport, which at the present time commences on October 1. Initial permits granted upon the promulgation of this subchapter and any permits granted during a fiscal year shall have the annual fees prorated according to the length of time the permits will remain valid. All permits will expire automatically on September 30 of each year.

(h) Each taxicab company or taxicab operator holding a permit shall pay a monthly fee to the Authority, in advance, of five dollars per month for each taxicab owned or operated by said permit holder.

(i) Each taxi servicing the airport must carry the following minimum coverages of insurance:

Liability for bodily injury, including death (limits \$100,000.00 for each person, \$300,000.00 each accident) and for property damage (limit \$50,000.00).

(j) Each taxicab company or operator shall submit a certificate of insurance and a copy of the insurance policy for review and acceptance by the Executive Director as part

of the conditions to obtain a permit to operate a taxicab at the airport. Such policy shall not be cancellable except upon 30 days' notice to the Authority.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (j).

In subsection (e), the Commission changed “meant” to “mean” to correct a manifest error.

§ 40-10.1-240 Attire for Taxicab Operators and Related Matters

(a) Because all ports of entry in the Commonwealth convey to guests and visitors a “first impression” of the Northern Mariana Islands and its people, it is important that such impression convey not only its natural beauty and the friendliness of its people, but also that of safety, neatness and proper decorum. To promote these objectives, the Authority finds it both necessary and proper to implement a dress code for taxicab operators authorized by the Authority to pick up passengers and customers at all airports under its jurisdiction.

(b) All taxicab operators having a valid permit to pick up passengers and customers at airport premises are required to wear dark dress pants, island print dress shirt, and dark dress shoes with socks. No taxicab operator shall be permitted to wear zorris or slippers, t-shirt or polo shirt, or short pants. All dress attire required of taxicab operators shall be neat and clean.

(c) No employee, officer, or director of the Commonwealth Ports Authority shall be permitted to operate a taxicab at any public airport in the Commonwealth.

(d) No person having a felony conviction or a misdemeanor conviction involving moral turpitude shall be given a permit by the Authority to operate a taxicab on airport premises.

(e) All taxicab operators applying for a permit to pick up passengers at airports under the jurisdiction of the Authority shall be required to provide the Authority with a current police clearance, a copy of the applicant's business license and driver's license, a copy of the applicant's current automobile liability insurance policy, and a copy of the applicant's Taxicab Bureau permit. Furthermore, the taxicab operator shall provide the Authority with a certified copy of his/her business gross revenue (BGR) report as filed with the CNMI Division of Revenue and Taxation, no later than 30 days after the end of each calendar year.

(f) All taxicab operators shall provide service to their customers and passengers courteously, cheerfully, promptly, and safely. Further, a taxicab operator shall, at all times, not be under the influence of intoxicating liquor or drugs, shall not be disorderly, boisterous, or argumentative, shall not be sleeping in his/her cab and shall comply with all rules and regulations of the CNMI Taxicab Bureau [NMIAC, title 20, chapter 80].

(g) No taxicab operator shall leave his/her vehicle unattended for longer than ten minutes. Leaving one's vehicle unattended for longer than ten minutes may result in the vehicle being towed away, at the operator's expense; unless for good reason, written permission is granted by the Commonwealth Ports Police for a taxicab operator to be away from his/her vehicle for longer than ten minutes.

(h) All taxicab operators shall adhere to this subchapter and the directions and instructions of the Commonwealth Ports Police Office. The Commonwealth Ports Police Office shall make sure that all taxicab operators are in compliance with this subchapter. Failure to comply may result in the suspension or revocation of the taxicab operator's permit to pick up passengers and customers at the airport.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 19 Com. Reg. 15381 (May 15, 1997); Amdts Proposed 19 Com. Reg. 14878 (Jan. 15, 1997).

Commission Comment: With respect to the references to the Taxicab Bureau, see Executive Order 94-3, reorganizing the executive branch, changing agency names and official titles, and effecting other changes, set forth in the commission comment to 1 CMC § 2001; see also NMAIC, title 20, chapter 80.

§ 40-10.1-245 Permit Required for Vehicle Rental Service

(a) No vehicle rental business or solicitation for such business may be conducted upon or within the airport unless:

(1) On-premises Vehicle Rental Concessionaires. The vehicle rental business is operating under the terms of a valid lease or concession agreement with the Authority; or,

(2) Off-premises Vehicle Rental Permittees. The vehicle rental business shall obtain and have in full force and effect a written permit issued by the Executive Director, upon such terms and conditions as he shall deem to be in the best interests of the Authority. Such permit shall authorize the permittee to pick up pre-confirmed and prearranged customers only and only at such areas as the Executive Director shall designate for customer pick-up. In no event shall permittee be allowed to solicit customers at the airport, nor shall permittees be allowed to pick up any disembarking passengers or their baggage at the customs/passenger arrival area of the airport nor at the commuter terminal of the Saipan International Airport.

(b) Any vehicle rental business operating under the terms and conditions of a permit issued under this section shall provide transportation for its customers by unmarked

vehicles, so as not to encourage the solicitation of customers at the airport. The term “solicitation” as used in this section shall be specifically defined to mean the asking of a passenger or other person if he or she desires to rent a vehicle. Use of the public vehicular parking area by vehicle rental business operating under the terms of subsection (a)(2) is strictly prohibited. Such vehicle rental businesses shall not suffer or permit its customers to use such areas to pick up or drop off any rental vehicle, or for the storage of any rental vehicle. Permits issued under subsection (a)(2) shall not be exclusive. The fee for any permit issued under subsection (a)(2) shall be five thousand dollars per month for Francisco C. Ada/Saipan International Airport, three thousand five hundred dollars per month for Rota and Tinian International Airports, and shall be payable monthly in advance. Failure to pay such permit fee within seven days of its due date shall serve to invalidate any permit understanding. Any vehicle rental business operating at or upon the airport without a valid permit, or in violation of the terms and conditions of its permit, or this subchapter, shall be subject to such penalties as set forth under § 40-10.1-255(f) and may have its privilege to conduct such business at the airport terminated pursuant to § 40-10.1-105.

(c) Liability for bodily injury, including death (limits \$100,000.00 for each person, \$300,000.00 each accident and for property damage limit \$50,000.00).*

*So in original; see the comment to this section.

(d) Each vehicle rental business shall submit a certificate of insurance and a copy of the insurance policy for review by the Executive Director prior to obtaining a permit to operate a vehicle rental business at the airport. A certificate or certificates evidencing such insurance shall provide that such insurance coverage will not be cancelled or reduced without at least thirty days prior written notice to the Authority.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 26 Com. Reg. 21710 (Jan. 22, 2004); Amdts Proposed 25 Com. Reg. 21465 (Nov. 17, 2003); Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

The 1994 amendments amended and readopted subsections (a) through (d). The 2004 amendments amended subsection (b).

In subsection (c), it appears that the following language was erroneously omitted in the 1994 amendments: “Each vehicle rental business servicing the Airport under Subpart (a) [subsection (a)(1)] of this Part 2.9 [§ 40-10.1-245] shall carry such insurance coverage for its customers as is provided in its agreement with the Authority. Each vehicle rental business servicing the Airport under subpart (b) [subsection (a)(2)] of this Part 2.9 [§ 40-

10.1-245] shall carry at least the following insurance coverage for its customers:” Compare 14 Com. Reg. at 9552 (Aug. 15, 1992) and 16 Com. Reg. at 11688-89 (Feb. 15, 1994).

§ 40-10.1-250 Group Transportation Permits

No owner or operator of any vehicle carrying passengers for hire, including tour buses or any hotel/motel vehicle carrying hotel guests, shall pick up or unload passengers upon the airport without a written permit issued by the Executive Director, which permit shall state, among other requirements, those which relate to safety, licensing, traffic regulations, and insurance, and shall prescribe fees and shall state what privileges are granted by the permits issued. Permits issued under this section will not be exclusive.

(a) Bus, or any vehicle with a seating capacity in excess of 25 (licensed for hire)
A basic monthly fee of one hundred and twenty-five dollars per vehicle.

(b) Bus, limousine, stretch-out or any vehicle with a seating capacity of 25 or less (licensed for hire)
A basic monthly fee of one hundred dollars per vehicle.

(c) Hotel-motel vehicles (owned, leased, or operated)
A basic monthly fee of seventy-five dollars per hotel or motel.

(d) Time and place of payments

(1) The monthly permit fees shall be applicable only for the period in which issued and shall be paid to the Executive Director in advance of providing ground transportation services at the airport.

(2) Payments shall be made at the Office of the Executive Director.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-255 Implementing Rules

(a) Notice of Violation. Any person violating any of the provisions of §§ 40-10.1-201 through 40-10.1-250, inclusive, shall be given written notice thereof by a duly authorized employee of the Authority.

(b) Same; Form of Notice. The written notice shall be in a form prescribed by the Executive Director. The form shall be prepared in a duplicate, with the original copy being served upon the violator in the manner provided herein, and the duplicate copy being returned to the Office of the Executive Director.

(c) Same; Manner of Service. Service of the notice of violation shall be served upon the violator as follows: If the violator is physically present at the scene of the violation, the notice of violation shall be served upon him personally. If the violator is not so present, service may be effected by leaving the notice of violation upon the windshield of the offending vehicle, or alternatively upon any other prominent place upon such vehicle.

(d) Same; Who May Serve. Persons authorized to serve the notice of violation provided for herein are the Executive Director, the Airport Manager, any employee of the Department of Public Safety of the Government of the Northern Mariana Islands, and any security officer of the Authority.

(e) Denial of Liability. Any person against whom a violation of any of the provision of §§ 40-10.1-201 through 40-10.1-230, inclusive, is alleged shall have ten days either to deny liability therefor, or to pay the fine as established herein. The notice of violation shall state that failure to pay fine assessed within the ten day period may result in collection of said fine through the courts of the Northern Mariana Islands. In the event suit is brought to recover any fine assessed under this part 200, the offender shall also be liable for court costs and reasonable attorneys fees.

(f) Schedule of Fines. The schedule of fines to be assessed for the violation of §§ 40-10.1-201 through 40-10.1-250 of this part shall be as follows:

(1) § 40-10.1-210: \$50.00

(2) §§ 40-10.1-201, 40-10.1-205, 40-10.1-215, 40-10.1-220 and 40-10.1-225: \$30.00

(3) § 40-10.1-230: \$20.00 plus towing and storage charges.

(4) §§ 40-10.1-235, 40-10.1-245, 40-10.1-250: \$100.00; and in addition, any found in violation of these sections may have the privilege to conduct such business at the airport terminated pursuant to § 40-10.1-105.

(g) Removal of Vehicles. Whenever a vehicle is parked so as to create a blockage or other hazard to the orderly flow of traffic to, in, or from the airport, or when a vehicle has been abandoned, or when a rental vehicle operating pursuant to § 40-10.1-245 is parked within the public vehicular parking area, the Executive Director may order the vehicle removed to an authorized parking location, or to the Authority impound lot, if no authorized space can be found at the airport. All abandoned vehicles shall be taken to the impound lot where the owners may reclaim them in accordance with applicable law and regulations, and upon payment of fines or charges established by the Executive Director.

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

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs of section (f) were not designated. The Commission designated subsections (f)(1) through (f)(4).

In subsections (f)(2) and (f)(4), the Commission inserted colons before the monetary fine amounts to ensure consistent punctuation.

Part 300 - General Operation on Public Aircraft Area

§ 40-10.1-301 Identification

Drivers of all vehicles operating on the operational areas shall obtain permission from the Executive Director before entering upon the taxiways and runways. Between the hours of sunrise and sunset such vehicle shall have a functioning radio receiver in operation or an overhead red light shall be displayed, or it shall be painted bright yellow, or it shall display a checkered flag, not less than three feet square of international orange and white, the checks being at least one foot on each side; and between the hours of sunset and sunrise conspicuous overhead operating red lights shall be displayed. The Executive Director shall in all cases specify in writing the identifications required.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-305 Enplaning or Deplaning Passengers

No vehicle shall move or* or across the public ramp and apron areas while passengers are enplaning or deplaning, except in conformity with traffic directives issued by the Executive Director. No vehicle shall be operated without operating lights on the operational area during the hours of darkness.

*So in original; probably should be “on.”

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-310 Safety of Aircraft Operation

The Executive Director may suspend or restrict any or all operations without regard to weather conditions whenever such action is deemed reasonably necessary in the interest of safety.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-315 Deviation from Rules

Any deviation from the rules in this part shall be coordinated with the Executive Director prior to conducting operations which are contrary to provisions herein contained, except that the Executive Director may temporarily authorize deviation or suspension of portions of this part as may be required in the interest of safety. Any deviation from this part shall be the sole responsibility of the person conducting the operation which is not in strict accord with the provision herein contained.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission changed “operation” to “operations” to correct a manifest error.

Part 400 - Taxiing Rules

§ 40-10.1-401 Taxiing and Ground Rules

§ 40-10.1-401 Taxiing and Ground Rules

- (a) No aircraft engine shall be run at the airport unless a pilot or a certificated A & P (airframe and power-plant) mechanic qualified to run the engines of that particular type of aircraft is attending the controls.
- (b) No person shall taxi an aircraft on the airport until he has ascertained that there will be no danger of collision with any persons or objects.
- (c) All aircraft shall be taxied at a safe and reasonable speed.
- (d) All aircraft operating on the airport shall be equipped with wheel brakes in proper working order.
- (e) No aircraft shall taxi between the airline passenger terminal gates and aircraft parked on the terminal apron.
- (f) Where taxiing aircraft are converging, the aircraft involved shall pass each other bearing to the right-hand side of the taxiway unless otherwise instructed by traffic control.
- (g) No aircraft shall be taxied into or out of any hangar under its own power.
- (h) All aircraft being taxied, towed, or otherwise moved at the airport shall proceed with navigation lights on during the hours between sunset and sunrise.

(i) Aircraft engines shall be started or operated only in the places designated for such purposes by the Authority.

(j) All repairs to aircraft or engines shall be made in the areas designated for this purpose. Adjustments and repairs may be performed on air carrier aircraft at gate positions on the terminal apron when such repairs can be accomplished without inconvenience to other persons. Any aircraft being repaired at a gate position shall be moved immediately upon the request of the Executive Director. No aircraft engine shall be run up above idle power for test purposes at any gate position.

(k) Aircraft shall not be washed except in areas and in the manner designated by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 500 - Traffic Pattern, Landing and Takeoff

§ 40-10.1-501 Left-hand Traffic

All aircraft in flight below fifteen hundred feet above the ground surface within a three mile radius of the airport shall conform to a standard left-hand flow of traffic and to the designated traffic pattern, and to the following rules, unless specifically instructed otherwise by traffic control, when operational:

(a) The traffic direction shall be as indicated by such devices as a segmented circle or by wind sock.

(b) All landings and takeoffs shall be confined to the paved runway and shall not be conducted on a taxiway or apron, except by helicopters which may land on designated apron areas.

(c) No turn shall be made after takeoff until the airport boundary has been reached and the aircraft has attained an altitude of at least four hundred feet and the operator has ascertained there will be no danger of collision with other aircraft.

(d) Aircraft shall enter the traffic pattern on or before the downwind leg and shall exercise caution and courtesy so as not to cause aircraft already in the pattern to deviate from their course at the discretion of the pilot.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-505 Ceiling Limitations

When ceiling and/or visibility are less than those authorized by Federal Aviation Regulations for conduct of visual flight operations, no takeoffs or landings are to be authorized at the airport, except when proper clearance has been obtained from traffic control, when operational.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-510 General Traffic Rules

(a) In advance of any flight test, practice instrument flight, or practice low approach to be conducted within the airport clear zone, the pilot shall make the necessary arrangements with the FAA airport traffic controller on duty, when available, and shall receive clearance before starting such maneuvers, and shall observe all local traffic and avoid interference with same.

(b) No motorless aircraft shall land or take off from the airport.

(c) The Executive Director shall have the right to deny the use of the airport to any aircraft or pilot violating Authority or federal regulations, whether at the airport or elsewhere, pursuant to § 40-10.1-105.

(d) All aircraft operations shall be confined to hard-surfaced runways, taxiways, and aprons.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-515 Helicopter Operations Rules

(a) Helicopters arriving and departing the airport shall operate under the direction of the airport communication system at all times while within three miles of the airport.

(b) Helicopters shall avoid fixed-wing aircraft traffic patterns and attitudes to the maximum extent possible.

(c) Helicopters shall not be taxied, towed, or otherwise moved with rotors turning unless there is a clear area of at least fifty feet in all directions from the outer tips of the rotors.

(d) Helicopters shall not be operated within two hundred feet of any area on the airport where unsecured light aircraft are parked.

(e) During landings and takeoffs, helicopter aircraft shall not pass over any airport buildings, structures, their adjacent auto parking areas, passenger concourses, or parked aircraft.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 600 - Rules for Ground Operations

§ 40-10.1-601 Engine Run-up Restrictions

Aircraft engines shall be started or warmed up only by qualified persons, and at the places designated for such purposes. At no time shall engines be run-up in hangars, shops, other buildings, or when spectators are in the path of propeller streams or jet blasts.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-605 Aircraft Parking

Aircraft shall only be parked in areas designated for such purposes by the Executive Director.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-610 Area for Repairs

All repairs to aircraft or engines, except emergency repairs, shall be made only in areas designated for this purpose by the Executive Director.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-615 Runway Area Restrictions

No person or persons, except personnel authorized by the Executive Director, shall be permitted to enter the public runway area.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-620 Overparking of Aircraft on Apron

Any aircraft operator, upon notice from the Executive Director, shall move or cause an aircraft to be removed from any portion of the public ramp and apron areas within twenty minutes of such notification, notwithstanding the fact that he published tariffs of the Authority may prescribe fees for ramp occupancy by aircraft, establishing definite periods of time for such purpose.

Modified, 1 CMC § 3806(e).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-625 Power-in, Push-out of Aircraft

(a) All jet aircraft parking anywhere on the apron at Saipan International Airport shall be permitted to power-in, but must be pushed or towed out upon departure.

(b) It is recognized that some models of jet aircraft require starting of engines prior to push-out due to lack of an internal APU. In such case, the push-out requirement of subsection (a) of this section shall not apply; however, in such cases, such aircraft shall be towed or pushed out to a safe distance away from the terminal and from other aircraft before breakaway jet engine power is applied.

(c) Subject to the provisions of § 40-10.1-315, the Executive Director may make exceptions to the provisions of this section when he determines that power-out operations will not pose a hazard to other operations or aircraft upon the apron, and will not pose a hazard, inconvenience, or discomfort to passengers in the departure area of the terminal or in the process of boarding or deboarding another aircraft. However, no exception to this section may be granted by the Executive Director when more than one jet aircraft is on the apron at any one time.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-630 Running of Engines During Operations

No propeller-driven aircraft engine shall be operated while such aircraft is parked on the ramp, or during the loading or unloading of passengers or cargo, unless

(a) A duly authorized agent of operator of the aircraft is present during such loading or unloading, and such agent shall take all necessary steps to assure the safety of passengers and other persons upon the ramp; and

(b) The operator of such aircraft shall have deposited with the Authority a certificate or other evidence of insurance, in a form and upon a company satisfactory to the Authority, insuring the operator, the Authority, and their respective agents, employees, and officers, against the risks of personal injury, loss of life, and property damage in an amount of not less than \$1,000,000.00 per person, \$3,000,000.00 for each accident, and \$500,000.00 for property damage, provided that this insurance requirement shall not apply to any airline which has executed an airline use/operating agreement with the Authority pursuant to § 40-10.1-740, while such agreement remains in force and effect.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The 1994 amendments amended and readopted this section in its entirety.

§ 40-10.1-635 Flight Service Station

(a) The Authority operates a flight service station at Saipan International Airport. The purpose of the flight service station is solely for the purpose of providing information to aircraft operators concerning weather, and for no other purpose.

(b) This service is provided strictly as a convenience to aircraft operators, each of whom is free to obtain weather information from any other source whatsoever. No operator of an aircraft is entitled to rely on any information provided by the flight service stations, for any purpose whatsoever, whether such information relates to weather or any other subject matter.

(c) Without limiting the generality of any of the foregoing, all aircraft operators are reminded that all decisions relating to the operation of aircraft in the air are outside the responsibility of the Authority and the flight service station, and that neither the Authority nor its flight service station has any authority to transmit any orders relating to the operation of aircraft in the air. However, the Authority and its flight service station have authority to transmit orders relating to the operation of aircraft on the ground.

(d) Every person who owns or operates an aircraft to, from, or within any airport in the Northern Mariana Islands which is under the direction and control of the Authority, or within any airspace of the Northern Mariana Islands, as a condition of such operation, hereby agrees to save, hold harmless, and indemnify the Authority, and its agents,

servants, workmen, officers, and employees, from any and all claims demands, and liabilities whatsoever arising out of the operations of the flight service station.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

Part 700 - Conditions of Use of Airport

§ 40-10.1-701 Public Apron and Aircraft Parking Area Use

All aircraft, whether operated for revenue or nonrevenue purposes, shall use the public apron and aircraft parking area only under the conditions stated in this subchapter and shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-705 Departing Passenger Restrictions

All passengers departing from the airport and being carried for hire shall be processed through the facilities designated for such purpose by the Executive Director, and the use of such facilities shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-710 Arriving Passenger Restrictions

All terminating passengers and their baggage being carried for hire arriving at the airport shall be processed only through the facilities designated for such purposes by the Executive Director, and the use of such facilities shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-715 Transit Passenger Restrictions

Passengers transiting the airport may utilize, in common with the general public, the facilities of any terminal building. At any time, when required by Commonwealth of the Northern Mariana Islands Health, Immigration, and/or Customs regulations, all such transit passengers shall be held during any transit layover in a separate transit lounge provided by the Authority. If transit passengers are so required to use such transit lounge, such passenger use shall be subject to such fees and charges for use thereof as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-720 Restrictions on Purchase of Aviation Fuels

No aircraft may be fueled on the airport unless the operator thereof has a valid agreement with the Authority permitting such fueling, or unless said operator has obtained a written clearance therefor from the Executive Director. Such fueling clearance shall be issued to an aircraft operator upon showing the Executive Director that all of these conditions of use of airport have been or will be responsibly complied with and the fees and charges have been, or will be, paid under the terms hereof.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-725 Cargo Operations

(a) Except for tenants operating under a valid lease which provides otherwise, cargo may be boarded on aircraft only at locations designated by the Executive Director and subject to the conditions stated in this chapter, and shall be subject to such fees and charges as may from time to time be approved and published by the Authority.

(b) Air cargo may not be accepted for carriage, or delivered to consignees, at airline ticket counters or inside any security fence at Saipan International Airport; except that shipments not exceeding 25 lbs in weight and 45 inches in the sum of length, width, and height, may be accepted or delivered at ticket counters.

Modified, 1 CMC § 3806(d).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-730 Ground Handling Services

(a) Ground Handling Permits.

(1) No person or company shall operate at any airport as a ground handling company without a ground handling permit issued by the Authority.

(2) In order to provide for and to insure the orderly, safe, effective and efficient operation of the airports at the three major islands, and in keeping with international standards on ground handling operations, the Authority shall issue not more than three ground handling permits for each major island.

(b) Qualified Services. Each ground handler shall provide ground handling services to the highest international standards and in accordance with any reasonable requirements of the Authority as stipulated from time to time. Without limiting the particular requirements of each airline and the general need for orderly, safe, effective and efficient operations of the airport, a ground handler may provide the following services:

(1) Loading and unloading of freight and luggage to and from aircraft and the movement of such freight and luggage between passenger and/or freight terminals and the supervision of the collection of baggage and freight;

(2) The removal from aircraft of waste, rubbish, sewage and the like;

(3) Cleaning the aircraft cabins, cockpit, galleys, toilets;

(4) Replenishing supplies of literature, toiletries and other in-flight consumable used by passengers other than those to be supplied by the airline flight catering contractors;

(5) Move, park, and provide day-to-day services for aircraft;

(6) Provide concierge services; and

(7) Carry out such other operations and activities as may be conveniently carried out if related to the overall responsibilities accorded ground handlers under international standards.

(c) Qualified Employees.

(1) In carrying out its responsibilities hereunder, each ground handler shall use staff specifically approved by the Authority who have been fully and properly trained to operate typical equipment at the airport including but not limited to the operation of air bridges, lifts, escalators, conveyors, power supply units and sewage disposal systems and will only use equipment previously approved by the Authority.

(2) Each ground handler bears the responsibility to provide competent supervisors and staff at all times and also bears the burden of obtaining federal licenses and permits to qualify its employees to the technical particulars of the ground handling operations.

(3) Because of security concerns at the airport, it is necessary that all personnel employed by each ground handler have appropriate security clearance and be acceptable to the Authority and accordingly the ground handler must comply with all requirements imposed by the Authority relative to personnel. Furthermore, the Authority has the right at any time at its sole and absolute discretion to advise the ground handler that any person employed by the ground handler is not acceptable to the Authority in connection with the

airport operation, and thereafter, the ground handler shall not use such person in connection with its ground handling activities.

(d) Equipment Requirements.

(1) In carrying out its responsibilities under the permit, each ground handler must at all times maintain the minimum equipment inventory necessary to provide the qualified services contained in this part. The equipment inventory must include, but is not limited to, the following: aircraft tow tractors, airstart units, aircraft axle jacks, baggage carts, belt conveyor loaders, generator units, ground power units, container and pallet dollies, and lavatory trucks.

(2) The ground handler bears the responsibility to include additional equipment in its inventory to meet the requirements of the airline(s) it is servicing.

(e) Authority Right of Inspection. During the term of the permit, the Authority has the right to inspect the work place, offices, equipment and other possessions and facilities of each ground handler at any reasonable time.

(f) Indemnity by Ground Handler. In accepting a ground handling permit, each ground handler shall protect, defend, and hold the Authority and its officers, employees, agents, and representatives completely harmless from and against any and all liabilities, losses, suits, claims, judgments, fines, or demands arising by reason of injury or death of any person or damage to any property, including all reasonable costs for investigation and defense thereof (including but not limited to legal and court costs and expert fees), of any nature whatsoever arising out of or incidental to the permit and/or the use of airport facilities or the acts or omissions of the ground handler, its officers, agents, employees, contractors, subcontractors, invitee regardless of where the injury, death, or damage may occur, unless injury, death, or damage is caused solely by the negligence of the Authority.

(g) Insurance Requirements.

(1) Each ground handler must maintain in force during the term of the permit public liability and property damage insurance in the sum of \$5,000,000.00 for injury to* of each of any one person, and in the sum of \$5,000,000.00 for injury to or death of more than one person, and in the sum of \$1,000,000.00 for damage to property. The ground handler agrees that the Commonwealth Ports Authority shall be named as an additional insured under such insurance policy or policies. A certificate of insurance evidencing such insurance shall provide that such insurance coverage will not be cancelled or reduced without at least thirty** prior written notice to the Commonwealth Ports Authority.

(2) The ground handler shall submit a certificate of insurance and a copy of the insurance policy for review and acceptance by the Executive Director as part of the conditions to obtain a permit to operate a ground handling service at the airport.

*So in original; probably should be “injury to or death of.”

**So in original; probably should be “thirty days.”

(h) Financial Responsibilities.

(1) In order to assure orderly, safe, effective and efficient airport operations, each ground handler must demonstrate and maintain financial suitability during the duration of the permit term. At a minimum, the ground handler must maintain a total equity of \$500,000.00.

(2) The Authority may inspect the financial and accounting records of the ground handler at any time during working hours after having given sufficient notice for such inspection.

(3) The ground handler shall submit semi-annual financial reports within thirty days after the end of such period. Audited annual financial statements shall be submitted to the Authority within ninety days after the end of the fiscal year.

(i) Permit Period. A ground handling permit shall be for a period of five years and shall be renewable for additional five year periods provided that the Authority finds the services provided by the ground handler acceptable and that the ground handler has complied with all general mandates as to order, safety, efficiency, and effectiveness as intended in this chapter, and the specific provisions of this subchapter.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs of subsections (a), (c), (d), (g) and (h) were not designated. The Commission designated subsections (a)(1) and (a)(2), (c)(1) through (c)(3), (d)(1) and (d)(2), (g)(1) and (g)(2), and (h)(1) through (h)(3).

In subsection (b)(7), the Commission changed “relation” to “related” to correct a manifest error. In subsection (g)(1), the Commission changed “certificate of certificates” to “certificate of insurance” to correct a manifest error.

§ 40-10.1-735 Security Screening

Whenever security screening of passenger departing from the airport, and their carry-on baggage, is required by federal or other applicable laws or regulations, such security screening shall be conducted electronically, utilizing an electronic security screening system. Hand screening of passengers and their carry-on baggage shall also be permitted. The Authority provides an electronic security screening system for this purpose, which is available for use by all airlines serving Saipan International Airport on a reasonable and non-discriminatory basis. The use of said system is subject to the payment of such reasonable fees and charges as may be established, either by agreement with the system operator or otherwise.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-740 Airline Use/Operating Agreement

No air carrier providing scheduled service or scheduled charter service to or from any airport in the Commonwealth of the Northern Mariana Islands shall utilize any terminal facility owned or operated by the Authority unless such air carrier shall have entered into a written airline use/operating agreement with the Authority. Such agreement shall provide, among other things, that the failure to pay any fees and charges for the use of airport facilities in the Commonwealth shall be grounds for eviction from terminal facilities and the denial of the right of use of airport facilities.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994).

Commission Comment: The 1994 amendments added this section and moved the existing Airport Rules and Regulations § 7.9, entitled “Notice of Airline Schedule Changes” to the end of this part. See 14 Com. Reg. at 9566 (Aug. 15, 1992); 16 Com. Reg. at 11686-87 (Feb. 15, 1994); see also § 40-10.1-755.

§ 40-10.1-745 Insurance

(a) Every person who operates in* aircraft on regularly scheduled or charter service, or who is not a signatory to an airline use agreement, shall carry third-party liability insurance in amounts not less than \$5 million for personal injury or death and \$1 million for property damage.

*So in original; see the commission comment to this section.

(b) Every person who operates an aircraft to or from any airport and is not required to have insurance in the amounts set forth in § 40-10.1-630 and § 40-10.1-745(a) of this subchapter shall carry third-party liability insurance in amounts not less than \$1 million for personal injury or death and \$500,000.00 for property damage.

Modified, 1 CMC § 3806(c), (d), (f).

History: Amdts Adopted 16 Com. Reg. 11809 (Mar. 15, 1994); Amdts Proposed 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The 1994 amendments added new subsection (b) and amended and readopted subsection (a).

The starred word probably should be “an.” Compare 14 Com. Reg. at 9566 (Aug. 15, 1992) and 16 Com. Reg. at 11685 (Feb. 15, 1994).

§ 40-10.1-750 Surety Bond

(a) Amount. Every person who operates an aircraft at any airport and who is not a signatory to an airline use agreement with the Authority shall post a surety bond in an amount equal to the greater of

- (1) Ten thousand dollars, or
- (2) The sum of the following

- (i) Three months' departure facility service charges as provided in § 40-10.1-1215. The three months' departure facility service charges provided herein shall equal one-quarter of the aggregate of the departure facility service charges due and owing by the aircraft operator over the immediately-preceding twelve month period. In the event that the aircraft operator has not previously served an airport for the entire preceding twelve month period, the Authority shall estimate the amount of departure facility service charges based upon prior departures facility service charges due and owing by the aircraft operator to the Authority, if any, and/or the first and subsequently monthly history of the aircraft operator's flight operations in the Commonwealth; plus

- (ii) Three months' landing fees, as provided in § 40-10.1-1205 The three months' landing fees shall equal one-quarter of the aggregate of the aircraft operator's landing fees due and owing for the immediately preceding twelve-month period. In the event that the aircraft operator has not previously utilized an airport for the entire preceding twelve month period, the Authority shall estimate the amount of landing fees based upon prior landing fees due and owing by the aircraft operator to the Authority, if any, and/or the first and subsequent monthly landings of the aircraft operator; plus

- (iii) An amount equal to three months' fees and charges under the remaining provisions of part 1200 of this subchapter. The Authority shall estimate the amount of such fees and charges based upon the operating history of aircraft operator at the airports, and/or the anticipated utilization of the airports by the aircraft operator. The Authority reserves the right to adjust the surety bond, upward or downward, taking into consideration subsequent changes in estimated fees and charges.

(b) Bond. The form of the surety bond required by subsection (a) of this section, and the identity of the surety, shall be subject to the approval of the Authority. Such surety bond shall provide that the bond may not be cancelled or reduced except upon thirty days' prior written notice to the Authority. The terms and conditions of such bond shall further provide that, at any time when the aircraft operator fails to pay, when due, any fees and charges due and owing to the Authority pursuant to this subchapter or otherwise, the surety shall, upon demand by the Authority, pay to the Authority such sums as are then due and owing by the aircraft operator to the Authority.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-755 Notice of Airline Schedule Changes

Every air carrier operating regularly scheduled service, or scheduled charter service, to or from any airport of the Commonwealth shall, as soon as practicable, notify the Authority of any and every change in the scheduled arrival and departure of its flights. The Authority deems such notification necessary in order that the Authority may assure that airports are adequately staffed to handle such flights. If notification of a proposed scheduled change is not provided to the Authority at least forty-five days prior to the effective date of such schedule change, the Authority cannot guarantee that sufficient staff will be available at the airport affected.

Modified, 1 CMC § 3806(e), (f).

History: Adopted Amdts 16 Com. Reg. 11809 (Mar. 15, 1994); Proposed Amdts 16 Com. Reg. 11681 (Feb. 15, 1994); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-740.

Part 800 - Conduct of the Public

§ 40-10.1-801 Obstruction of Public Use

No person shall travel by foot or vehicle on any portion of the operational area of the airport, except upon the roads, walkways, or places provided for the particular class of traffic, nor occupy the roads or walkways in such a manner as to hinder or obstruct their proper use.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-805 Restricted Areas

No person shall enter any restricted area of the airport posted as being closed to the public, except those persons authorized by the Executive Director.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-810 Entrance Into Public Areas

Operational areas, ramps, aprons, and loading positions are closed to the public, and no tenant, either corporate or personal, shall permit any unauthorized person to gain access

to such areas either by private or common-use passageways or through private areas. No person shall enter upon the public ramp and apron area or public cargo ramp and apron area of the airport, except those persons authorized by the Executive Director, and those persons assigned to duty therein, or those persons entering upon the public ramp areas for purposes of embarkation or debarkation.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-815 Signs and Advertisements

No person shall post, distribute, or display signs, advertisements, circulars, printed or written matter of any kind or character at the airport or on any leased premises therein where such signs are visible from any public area, except when authorized in writing by the Executive Director. All signs shall be of a design, size, and character placed in a manner approved in writing by the Executive Director, and subject to such fees and charges as may from time to time be approved and published by the Authority.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-820 Soliciting of Funds

No person shall solicit funds, for any purpose whatsoever, at the airport.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-825 Selling, Soliciting, and Entertaining

(a) No person, except those persons authorized by written contract to do so, or any other persons with the written permission of the Executive Director for specific occasions, shall in or upon any area of the airport:

- (1) Sell, offer for sale, distribute, or give away any article of merchandise, any promotional or informational materials, leaflets, or any thing of value;
- (2) Solicit any business or trade, including the carrying of baggage for him, the shining of shoes or boot blacking, or the rental or hire of cars, taxicabs, or aircraft;
- (3) Entertain any persons by singing, dancing, or playing any musical instrument;
- (4) Solicit alms or other contributions.

(b) The Executive Director shall grant permission for activities protected by the First Amendment, but subject to such restrictions as to time, manner, and place as the Executive Director shall deem reasonable under the circumstances.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-830 Loitering

No person shall loiter in or about any toilet area, waiting room, or any other appurtenance of the airport. Continued and willful violation of this rule by any individual will justify his ejection from the airport; and admittance again thereto will be barred unless a legitimate purpose can be shown.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-835 Gambling

To the extent authorized by law and to the extent not prohibited by any existing contractual obligations, the Commonwealth Ports Authority (CPA) may authorize the operation of lawful gambling and amusement devices at any of the public airports under its jurisdiction to interested concessionaires, on such terms and conditions as the Authority may determine necessary or appropriate to govern such operation. Such conditions shall include, but shall not be limited to, the types of gambling and/or amusement devices permitted, the location and placement of such devices, access thereto, the hours of operation, the minimum qualifications that a concessionaire must have, and so forth.

History: Amdts Adopted 23 Com. Reg. 18385 (Sept. 24, 2001); Amdts Proposed 23 Com. Reg. 17826 (Apr. 23, 2001); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-840 Disorderly Conduct

Any person who shall commit any disorderly or obscene act or engage in other offensive conduct, or commit any criminal act on the airport will be immediately ejected therefrom, and may be subjected to prosecution in accordance with the laws of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-845 Preservation of Property

No person shall:

- (a) Destroy, injure, deface, or disturb in any way any building, sign, furniture, equipment, marker, other structure, tree, flower, lawn, or other property on the airport.
- (b) Walk or operate a vehicle on lawns and seeded areas on the airport.
- (c) Abandon any personal property on the airport.
- (d) Litter or dispose of any waste on any portion of airport property or portion of access road.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-850 Disposition of Waste Articles

No person shall dispose of paper, cigars, cigarettes, bottles, chewing gum, betel nut, or any waste or refuse material, on the floor of any terminal building or grounds adjacent thereto, except in receptacles provided for such purposes.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-855 Pets

- (a) No persons shall enter any public building or operational area of the airport with any pet, except a “seeing-eye” dog, or one properly confined for shipment, on a leash, or confined in such a manner as to be under control.
- (b) No tenant of the terminal buildings, or any employee of such tenant, shall be permitted to keep pets on airport premises.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-860 Other Animals

No person shall permit livestock or any other animals under his or her control or custody to enter the airport, except one properly confined for shipment. Any stray livestock or animal on the airport will be disposed of by the Authority in accordance with the laws and ordinances applicable thereto.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-865 Sanitary Care

No person shall place, discharge, or deposit, in any manner whatsoever, any offal, garbage, or refuse in or upon any airport road or operational area, except at such places and under such conditions as the Authority may prescribe. Spitting on the floor or sidewalks of the terminal buildings is prohibited.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-870 Penalties

(a) Any person violating any provision of this part shall be given written notice thereof by a duly authorized employee of the authority and shall be assessed a civil penalty as follows:

- (1) \$25 for violations of §§ 40-10.1-801, 40-10.1-815, 40-10.1-820, 40-10.1-825, 40-10.1-830, 40-10.1-855, and 40-10.1-860.
- (2) \$100 for violations of § 40-10.1-835, 40-10.1-840, 40-10.1-845, 40-10.1-850, 40-10.1-865.
- (3) \$1,000 for violations of § 40-10.1-805, and 40-10.1-810.

(b) The provisions of § 40-10.1-255(e) shall apply of* liability for such penalty is denied.

*So in original; probably should be “if.”

Modified, 1 CMC § 3806(c).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

Part 900 - Use of Particular and Designated Areas

§ 40-10.1-901 Areas Designated for Specific Uses

Except as otherwise provided for in contracts with the Authority, the use of the following designated areas shall be limited to the following purposes:

- (a) Public aircraft parking and storage areas may be used only for parking and storing aircraft fuel and lubricants which must be in tanks, other supplies for use on such aircraft, and for making repairs to aircraft.
- (b) Public ramp and apron areas may be used only for loading and unloading passengers, cargo, mail and supplies, to or from aircraft, servicing aircraft with fuel and lubricants, performing the operations commonly known as “ramp service,” performing inspections, minor maintenance, and other services upon or in connection with aircraft incidental to performing “ramp service” and parking mobile equipment actively used in connection with such operations. Washing of aircraft, vehicles or other equipment, without the authorization of the Executive Director, is prohibited.
- (c) Public taxiways may be used only for the ground movement of aircraft to, from, and between runways, public cargo ramp and apron areas, public ramp, and apron areas, public aircraft parking and storage areas, and other portions of the airport; and for the movement of approved ramp equipment and airport equipment properly identified.
- (d) Runways may be used only for the landing and takeoff of aircraft and for the towing of aircraft to the closest towing exist thereupon after completion of landing roll. No braked wheel turns will be permitted on the runways.
- (e) Airport roads may be used as a means of ingress and egress for vehicles to, from, and between the public roads with which such roads connect, and the various buildings and land areas at the airport abutting upon such roads; and sidewalks along such roads (and other portions of such roads, when designated for that purpose) may be used by pedestrians as a means of ingress and egress to, from, and between various portions of the airport.
- (f) In case of labor disputes, picketing or other demonstrations shall be confined to the entrance road of the airport, and in no event within five hundred feet of any terminal buildings.

(g) Hallways, corridors, lobbies, and waiting rooms in passenger terminal buildings may be used as a means of ingress and egress to, from, and between the airport roads and the ramp and apron space and the various offices and places of business within the terminal buildings. Such hallways, corridors, lobbies and waiting rooms may also be used at such places of business for the purposes of carrying on any transactions authorized by a valid lease, permit, or license from the Authority.

(h) Hallways, corridors, and lobbies in buildings to which members of the public are admitted, other than passenger terminal buildings, may be used as a means of ingress and egress to, from, and between the airport highways and other portions of the airport, abutting upon such buildings, and the various offices and other places of business in such buildings.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-905 Personnel Authorized to Use Areas

Nothing herein contained shall be construed to limit the use of any area, or portion of the airport, by any security officer, fireman, Customs Officer, Immigration and Naturalization Officer, Law Enforcement Officer, or any other public officer or employee, from entering upon any part of the airport when properly required in the performance of his official duties.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-910 Compliance with Rules and Regulations

The use of the foregoing areas and portions of the airport is subject to compliance with this subchapter, and the payment of such rates, fees, or charges as may be established by the Authority for such use.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 1000 - Safety Provisions

§ 40-10.1-1001 Dangerous Acts

No persons in or upon the airport shall do, or omit to do, any act if the doing or omission thereof endangers unreasonably, or is likely to endanger unreasonably, persons or property.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The 1998 amendments proposed to amend and readopt part 1000 in its entirety as a new part 1000, entitled “Fire Safety Provisions.” A notice of adoption for the 1998 amendments has not been published and, therefore, the proposed changes are not incorporated.

§ 40-10.1-1005 Smoking

(a) No person shall smoke or carry lighted cigars, cigarettes, pipes, matches, or any naked flame, in or upon any fuel storage area, public ramp and apron area, public cargo ramp and apron area, or public aircraft parking and storage area, or in any other place where smoking is specifically prohibited by signs, or upon any open space within fifty feet of any fuel carrier or aircraft which is not in motion; nor shall any person throw from any open deck, gallery, or balcony, contiguous to such areas or such carriers or aircraft, cigars, cigarettes, or similar articles.

(b) No person shall start fires of any type, including flare pot and torches, on any part of the airport without permission of the Executive Director.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1010 Explosives

No person shall, without prior permission of the Executive Director, keep, transport, handle or store at, in, or upon the airport any cargo of explosives or other dangerous articles which are barred from loading in, or transportation by, civil aircraft in the United States, under the provisions of the Federal Aviation Regulations. No waiver of such regulations, or any part thereof, shall constitute, or be construed to constitute, a waiver of this section, nor an implied permission to keep, transport, handle, or store such explosives or other dangerous articles at, in, or upon the airport.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

The Commission changed “fo” to “of” and corrected the spelling of “waiver.”

§ 40-10.1-1015 Use of Fire Extinguishers

Fire extinguishing equipment at the airport shall not be tampered with at any time, nor shall it be used for any purpose other than fire fighting or fire prevention. All such equipment shall be kept inspected in conformity with the regulations of the National Board of Fire Underwriters. Tags showing the date of the last inspection shall be attached to each unit, or records acceptable to fire underwriters shall be kept, showing the status of such equipment.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1020 Storage of Inflammable Materials

No person shall keep or store any volatile inflammable liquids, gasses, signal flares, or other similar material in the hangars or in any other building on the airport. Such material, however, may be kept in aircraft or vehicles in their installed supply or operating tanks, or in approved containers, or in rooms or areas specifically approved for such storage by the Executive Director.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1025 Lubricating Oils

No person shall keep or store lubricating oils in or about the airport; provided, however, that such material may be kept in aircraft or vehicles in their installed supply or operating tanks, or in containers provided with suitable draw-off devices, or in areas or sealed containers specifically approved for such storage by the Executive Directors.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1030 Fire Apparatus

All tenants, or lessees, or owners of hangars, or shop facilities shall supply and maintain adequate and readily accessible fire extinguishers and fire equipment of the type approved by the Department of Public Safety. They shall be subject to the periodic inspection of the Department of Public Safety. The Executive Director may prescribe fire drills for all tenants from time to time.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1035 Fuel Handling while Engines Are Running

Aircraft fueling is prohibited while the engine of the aircraft being fueled is running, unless carried out in accordance with a previously approved company standard operating procedure.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1040 Proper Grounds

During all fuel handling operations, in connection with any aircraft at the airport, the aircraft and the fuel dispensing, or draining apparatus, shall be grounded by wire to prevent the possibility of static ignition of volatile liquids.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1045 Distance from Buildings

Aircraft fuel handling at the airport shall be conducted at a distance of at least fifty feet from any hangar or other building.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1050 Fire Extinguishers Required

During fuel handling operations, in connection with any aircraft at the airport, at least two CO₂ fire extinguishers (15-pound or larger) or other type extinguisher approved by the fire underwriters shall always be immediately available for use in connection therewith.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1055 When Passengers Are Aboard

During fuel handling, in connection with any aircraft, no passenger shall be permitted to remain in such aircraft unless a cabin attendant is at the door and a passenger ramp is in position for the safe and rapid debarkation of passengers.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1060 Smoking Near Aircraft

Smoking is prohibited in or about any aircraft or on any ramp, apron, or loading position. Only personnel engaged in fuel handling or in the maintenance and operation of the aircraft being fueled shall be permitted within a distance of fifty feet of the fuel tanks of such aircraft during fuel handling operations.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission changed “he” to “be” to correct a manifest error. See the comment to § 40-10.1-1001.

§ 40-10.1-1065 Starting Engines

No person shall start the engines of any aircraft when there is gasoline, or any type of fuel, on the ground under the aircraft. In the event the spillage of gasoline, or any type of fuel, no person shall start an aircraft engine in the area in which the spillage occurred, even though the spillage may have been flushed, until permission has been granted for the starting of engines in that area by the Airport Fire Chief or his designee.

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1070 Cleaning of Aircraft

Interior and exterior cleaning of aircraft shall be done only in areas designated or approved for that purpose.

Modified, 1 CMC § 3806(g).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission inserted the word “for” to correct a manifest error. See also the comment to § 40-10.1-1001.

§ 40-10.1-1075 Fuel and Oil Spillage

(a) In the event of spillage or dripping of fuel, oil, grease, or any other material, except such spillage or dripping as may be normal in aircraft or vehicular operation, which may be hazardous or unsightly or detrimental to the pavement in any area at the airport, the same shall be removed immediately. The responsibility for the immediate removal of such fuel, oil, grease, or other material will be discharged by the operator of the equipment causing the same, or by tenant or concessionaire responsible for the deposit thereof.

(b) Receptacles containing waste oil, or such waste oil, must be placed in containers provided by the tenant for such purposes for further disposition. Throwing oil on pavement or on any grassed or planted area is prohibited, and any offender shall be liable for damage thereto or subject to § 40-10.1-1120.

Modified, 1 CMC § 3806(c), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

§ 40-10.1-1080 Enforcement of Safety Provisions

(a) In case of any violation of this part, the Executive Director shall take such steps as may be required by the situation to prevent any harmful effects upon persons or property, and to preserve the safe and efficient operation of the airport facilities.

(b) In the event the Executive Director shall take such steps as he or she deems necessary to prevent any harmful effects upon persons or property, the Executive Director and the Authority shall be held harmless and without liability for any and all adverse consequences and/or damages resulting from the Executive Director's actions pursuant to this part.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Proposed 20 Com. Reg. 16110 (Sept. 15, 1998); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: See the comment to § 40-10.1-1001.

Part 1100 - Miscellaneous Provisions

§ 40-10.1-1101 Conformance with U.S. Regulations

All aeronautical activities at the airport shall be conducted in accordance with rules, regulations and provisions adopted in conformity with applicable provision approved by the Federal Aviation Administration. The Air Traffic Rules as contained in the regulations of the United States Federal Aviation Agency and other appropriate rules and regulations of that body as they pertain to aircraft operations on the airport are hereby adopted by reference and made a part of this subchapter rules as though they were fully contained herein.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1105 Careless or Reckless Operation

No person shall operate an aircraft in a careless or reckless manner so as to endanger life or property or to constitute a disturbance of the peace.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1110 Safety of the Public

The Executive Director shall, at all times, have authority to take such summary action as may be convenient or necessary to safeguard the public.

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1115 Lost and Found Articles

Any person finding mislaid articles at the airport shall turn over to a security officer or to the office of the Executive Director. Articles unclaimed by the owner within ninety days after their receipt will be considered as lost articles to be disposed of in a manner to be determined by the Authority. Nothing in this section will be construed to deny the right of scheduled air carriers to maintain lost and found services for their passengers.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission inserted a period at the end of the sentence ending with “determined by the Authority” to correct a manifest error.

§ 40-10.1-1120 Observance of Rules and Regulations

Tenants on the airport are responsible for their employees observance of the rules; however, for continued willful and flagrant violation, any employee of any tenant, may be ejected or barred from the airport by the Executive Director.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1125 Penalties

(a) Except as otherwise provided, any violation of this subchapter is punishable by a fine of not to exceed one thousand dollars or by imprisonment not to exceed three months, or both upon conviction by a court of competent jurisdiction. If the violation is a continuing one, each day the violation continues is a separate offense. Any person who has received notice of violation and assessment of a civil penalty shall have fifteen days to answer the assessment by denying liability, by offering a compromise to the Executive Director, or by paying the assessment may result in the Authority’s exercising its authority pursuant to 2 CMC § 2146(b).*

*So in original.

(b) Personal property or other goods placed on the airport premises in violation of this subchapter may be removed from the place where found by the Executive Director and kept by the Executive Director until reclaimed by the owner, or if not reclaimed, then disposed of by the Executive Director. Such articles may not be reclaimed except upon the payment of a fee, to be determined by the Executive Director, for the cost of storage and removal of the property in question.

(c) Nothing contained within this section shall in any way alter or restrict the rights and remedies of the parties having valid leases or other operating agreements with the Authority as may be found in the respective agreements with the Authority.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Part 1200 - Schedule of Fees and Charges

§ 40-10.1-1201 Fees for Non-signatory Carriers

The fees and charges set forth in § 40-10.1-1205 through § 40-10.1-1220, multiplied by a factor of 1.5 shall be payable for the use of facilities at Saipan International Airport by any air carrier which is not a party to a valid airline use agreement with the Authority pursuant to § 40-10.1-740. At Rota International Airport and West Tinian International Airport, and the Saipan Commuter Terminal, the multiplying factor for non-signatory carriers shall be 1.25.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1205 Landing Fees

(a) A charge of one dollar and forty cents per thousand pounds certified maximum gross landing weight of the aircraft as determined by the FAA for said aircraft, for each landing at Saipan International Airport, shall be paid to the Authority.

(b) A charge of one dollar and six cents per thousand pounds certified maximum gross landing weight of the aircraft as determined by the FAA for said aircraft, for each landing at West Tinian International Airport or at Rota International Airport, shall be paid to the Authority.

(c) Exempted from paying landing fees are diplomatic, U.S. military, and Mariana Islands government aircraft, and any other aircraft operator which has a valid written agreement with the Authority, which provides for landing fees other than as provided for in this section.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 21 Com. Reg. 16803 (June 23, 1999); Amdts Proposed 21 Com. Reg. 16693 (Apr. 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

The 1999 amendments amended and readopted sections (a), (b) and (c). The 1999 amendments provided: “The foregoing amendments to Part 12: Schedule of Fees and Charges of the Airport Rules and Regulations shall become effective March 1, 2000. Until then, the existing Schedule of Fees and Charges shall apply.” 21 Com. Reg. at 16700 (April 19, 1999).

§ 40-10.1-1210 Public Apron and Operational Area Charge

(a) A minimum charge of twenty-five dollars, or if greater, fifteen cents per thousand pounds maximum gross certified landing weight, as determined by FAA for said aircraft for each one hour, or fraction thereof, for parking on the public apron adjacent to the terminal building shall be paid to the Authority by the aircraft operator. The payment of which shall, in addition to permitting the parking of the aircraft, also permit the use by the aircraft crew and nonrevenue passengers of the public facilities in the departure building and on the airport (but not including use of the arrival building and in-bound baggage handling facilities). Maximum time limit for aircraft apron use is three and one half hours, after which aircraft must be moved to the public aircraft parking area.

(b) Exceptions:

(1) Diplomatic, U.S. military, and Mariana Islands government aircraft.

(2) Any airline which has executed an operating agreement with the Authority pursuant to the provisions of § 40-10.1-740, while such agreement remains in force or effect. Any such airline operating under such an agreement shall pay a public apron and operational charge as set forth in its operating agreement. The Authority shall take all steps necessary to ensure that all operating agreements currently in effect shall be brought into compliance with the schedule of fees and charges set forth in this part on or before October 1, 1992.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1215 Departure Facility Service Charge (DFSC)

(a) To cover costs of operations and maintenance of terminal buildings and to service the revenue bond debt payment obligations incurred by the Authority to operate and maintain the various airport facilities, a departure facility service charge shall be assessed each aircraft operator, which charge shall be calculated on a per revenue passenger basis as follows:

(1) The DFSC at Saipan International Airport for FY 2001 shall be \$6.35 per passenger; for FY 2002, it shall be \$6.90 per passenger; for FY 2003, it shall be \$7.45 per passenger; and for FY 2004 and thereafter, it shall be \$8.00 per passenger.

(2) The DFSC at Rota International Airport and at West Tinian International Airport for FY 2001 shall be \$4.58 per passenger; for FY 2002, it shall be \$4.70 per passenger; for FY 2003, it shall be \$4.82 per passenger; and for FY 2004 and thereafter, it shall be \$4.95 per passenger.

(3) The DFSC at the Saipan Commuter Terminal for FY 2001 shall be \$2.98 per passenger; for FY 2002, it shall be \$3.10 per passenger; for FY 2003, it shall be \$3.25 per passenger; and for FY 2004 and thereafter, it shall be \$3.35 per passenger.

(b) The DFSC schedule set forth in subsection (a) above shall be paid to the Authority by every aircraft operator transporting revenue passengers from such airports. Diplomatic aircraft and U.S. military aircraft are exempted from the departure facility service charge.

(c) Notwithstanding the foregoing departure facility service charge schedule, the Commonwealth Ports Authority may provide to signatory airlines servicing the airports of the Commonwealth, an airline incentive fee discount on the applicable departure facility service charge, the passenger arrival fee, and other airport fees and charges, based on a discount rate which the Authority determines to be reasonable and appropriate under the circumstances, taking into account the Authority's financial condition, the Authority's future revenue projection, the Authority's revenue bond debt service obligations, and its operations and maintenance expenses. The airline incentive fee discount program is intended to encourage the signatory airlines to bring in more visitors to the Commonwealth and stimulate its economy.

(d) The foregoing amendments shall retroactively commence on January 1, 2001.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 23 Com. Reg. 17842 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17614 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 16803 (June 23, 1999); Amdts Proposed 21 Com. Reg. 16693 (Apr. 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The 1999 amendments amended subsections (a) and (b). The 1999 amendments provided: “The foregoing amendments to Part 12: Schedule of Fees and Charges of the Airport Rules and Regulations shall become effective March 1, 2000. Until then, the existing Schedule of Fees and Charges shall apply.” 21 Com. Reg. at 16700 (April 19, 1999).

The 2001 amendments added new subsections (c) and (d) and amended and readopted subsections (a) and (b). Subsection (d) refers to all of § 40-10.1-1215. See 23 Com. Reg. at 17619 (Jan. 19, 2001).

§ 40-10.1-1220 International Arrival Facility Service Charge

(a) To cover the added costs of operations and maintenance of the arrival terminal building for international deplaned passengers at the Saipan International Airport, a service charge calculated on the basis of two dollars and twenty cents per revenue passenger shall be paid to the Authority by every aircraft operator transporting international revenue passengers to the Saipan.

(b) For purposes of this part, “international deplaned passengers” is defined as all those deplaned passengers at the Saipan International Airport whose departure did not originate in Tinian, Rota, Guam, and whose destination is Saipan.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1225 Aircraft Parking Charge

Aircraft shall be parked at designated locations only.

(a) For aircraft paying the public apron and operational area charges cited in § 40-10.1-1210, aircraft parking charges shall be three cents per thousand pounds maximum gross certified landing weight as determined by FAA for said aircraft for each twenty-four hours, or fraction thereof, beginning at the time the aircraft moves to the parking area from the public apron.

(b) For aircraft not requiring use of the public apron and thus not subject to a charge thereof, aircraft parking charges shall be a minimum of five dollars, or three cents per thousand pounds for each twenty-four hours, or fraction thereof, thereafter.

(c) Monthly rates shall be twenty-two times the daily rate. All such charges shall be paid by the aircraft operator to the Authority prior to departure of the aircraft from the assigned parking position.

(d) Locally based aircraft parked in areas designated by the Executive Director for such purpose shall pay fifteen dollars per month, payable in advance.

(e) Exceptions:

(1) Diplomatic, U.S. military, and Mariana Islands government aircraft.

(2) Any airline which has executed an operating agreement with the Authority pursuant to the provisions of § 40-10.1-740, while such agreement remains in force or effect. Any such airline operating under such an agreement shall pay an aircraft parking charge as set forth in its operating agreement. The Authority shall take all steps necessary to ensure that all operating agreements currently in effect shall be brought into compliance with the schedule of fees and charges set forth in this part on or before October 1, 1992.

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

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The final paragraph was not designated. The Commission designated it subsection (e).

In subsection (b), the Commission changed “hall” to “shall” to correct a manifest error.

§ 40-10.1-1230 In-transit Passenger Service Charge

(a) Any operator using the airport for an in-transit stop (i.e., not involving airport-originating or terminating passengers) shall pay a service charge of a minimum of ten dollars or, if greater, a service charge calculated on the basis of thirty-five cents for each in-transit passenger to cover the costs of operating and maintaining the public use portion of the terminal buildings utilized by said in-transit passengers.

(b) Exceptions:

(1) Diplomatic, U.S. military, and Mariana Islands government aircraft.

(2) Any airline which has executed an operating agreement with the Authority pursuant to the provisions of § 40-10.1-740, while such agreement remains in force or effect. Any such airline operating under such an agreement shall pay an aircraft parking charge as set forth in its operating agreement. The Authority shall take all steps necessary to ensure that all operating agreements currently in effect shall be brought into compliance with the schedule of fees and charges set forth in this part on or before October 1, 1992.

Modified, 1 CMC § 3806(c), (e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1235 Catering Fee

(a) A fee equal to twelve percent of the gross billings (charges) made for the sale, delivery, boarding, and removal of inflight catering food and beverages shall be paid to the Authority by the supplier thereof as a condition of access to the airport.

(b) Exceptions.

In flight catering provided directly and not by contract, by a bona fide airline lessee of the airport, or by a concessionaire operating on the airport, under the terms of a valid lease.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1240 Fuel Flowage Fee

A fee equal to one and one half cents for each gallon of aviation gasoline and jet fuel delivered to the airport is hereby imposed. Effective July 1, 1999, the fuel flowage fee shall increase to two and one-half cents per gallon. The fuel flowage fee shall be paid by the seller thereof, upon the delivery of aviation gasoline and jet fuel to the airport. The seller shall deliver to the Authority, no later than the 15th day of every month, the fuel flowage fee payable for deliveries made to the airport during the previous month, together with appropriate documentation evidencing such fuel deliveries.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1245 Ground Handling Permit Fee

The fee for a ground handling permit shall be five thousand dollars per calendar quarter. Effective July 1, 1999, the ground handling permit fee shall increase to ten thousand dollars per calendar quarter.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999); Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1250 Ground Rent

- (a) Any exclusive use of ground space on the airport shall be subject to ground rent.
- (b) Any such exclusive use of ground space shall encompass the entire amount of ground space effectively occupied (i.e., in the case of building or facility, the ground space underlying that building or facility; and, in addition, all surrounding area effectively utilized for setbacks, parking, access, etc., shall be included). In the case where such effectively utilized area cannot be precisely described, it shall be assumed that the effective area shall be, at a minimum, equal five times the ground space occupied by the building or facility.
- (c) No tenant of the Authority may sublease or assign its leased premises or any interest thereon, without the prior consent of the Authority. Such consent, if granted, shall be conditioned upon payment to the Authority of not less than 25% of the total consideration for such sublease or assignment.

Modified, 1 CMC § 3806(f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

§ 40-10.1-1255 Passenger Facility Charges

The Authority is authorized to impose passenger facility charges (PFCs) not to exceed three dollars per enplaning passengers. All such charges shall comply with applicable federal laws, rules, and regulations as amended from time to time.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission changed “PFC’s” to “PFCs” to correct a manifest error.

§ 40-10.1-1260 Payment of Charges

All fees are to be paid in U.S. currency by the aircraft operator to the Office of the Executive Director, upon arrival (except in the case of parking charges which are to be paid prior to departure, and fuel flowage fees which shall be paid upon purchase of fuels) unless special arrangements have been made with the Authority in writing in advance. The Executive Director may authorize, in writing, fees to be paid in a manner different from that provided herein.

Modified, 1 CMC § 3806(g).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

Commission Comment: The Commission deleted a semicolon between “been” and “made” to correct a typographical error.

§ 40-10.1-1265 Surcharges on Airline Tickets Prohibited

No airline or other seller of tickets for air transportation operating at any airport owned and operated by the Authority shall state, charge, or collect any fees and charges specified in § 40-10.1-1205 through § 40-10.1-1225 separately from the price of an airline ticket; provided, however, that nothing herein shall prevent or restrict any such airline or other seller from charging and collecting a single fare, which may be periodically adjusted, subject to applicable restrictions imposed by law, to reflect the airline’s costs, which costs include but are not limited to such fees and charges.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 14 Com. Reg. 9534 (Aug. 15, 1992); Proposed 14 Com. Reg. 9079 (Mar. 15, 1992).

§ 40-10.1-1270 Taxicab Operator Permit Fee

(a) All taxicab operators authorized by the Executive Director to operate a taxicab at the airport shall pay a monthly taxicab permit fee of \$25.00 per vehicle, payable upon issuance of the taxicab permit.

(b) No vehicle or taxicab may operate at the airport without a valid taxicab decal issued by the Authority on an annual basis. This fee shall become effective on July 1, 1999.

History: Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-10.1-1275 Public Parking Fee

(a) All vehicles owned by members of the general public shall park their vehicles in designated public parking areas, and shall pay a public parking fee, as follows:

Parking Category	Fee
Minimum fee (less than 1 hour)	\$1.00
Hourly rate	1.00
Each additional hour (or fraction of an hour)	1.00
Daily rate (24 hour maximum).	10.00
Annual rate per vehicle for employees of airport tenants	35.00
Rate per vehicle for frequent flyers	
- annual rate	400.00
- semi-annual rate	250.00
Annual rate per vehicle for service and delivery vehicles	200.00

(b) No fee is imposed for CPA vehicles, for vehicles owned by CPA employees and officials, for car rental vehicles, and for CNMI government vehicles.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 23 Com. Reg. 17842 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17614 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 16855 (July 23, 1999); Amdts Proposed 21 Com. Reg. 16779 (May 19, 1999).

Commission Comment: In June 2008, CPA made emergency amendments to this part addressing fees and charges for incineration and aircraft waste handling services. See 30 Com. Reg. 28519 (June 27, 2008). These amendments were effective for only 120 days from June 3, 2008. The notice referred to the permanent adoption of the amendments pursuant to an attached notice of proposed regulations. However, no such notice was attached and Chamorro and Carolinian translations were not published. If properly

proposed and adopted, these sections will be codified as § 40-10.1-1280 and § 40-10.1-1285.

The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 2001 amendments amended subsections (a) and (b) and deleted former subsection (c).

CHAPTER 40-20
SEAPORT DIVISION

Subchapters

- 40-20.1 Harbor Regulations**
- 40-20.2 Terminal Tariff Rules and Regulations**

SUBCHAPTER 40-20.1
HARBOR REGULATIONS

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- § 40-20.1-001 [Reserved]
- § 40-20.1-005 Definitions

Part 100 General Regulations Governing Harbor Usage

- § 40-20.1-101 General Statement in Conflict with Other Laws, Rules or Regulations
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- § 40-20.1-248 Objectionable Materials
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- § 40-20.1-252 Disposal of Derelict Vessels, Large Objects
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- Part 300 Fishing and Recreational Activities**
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- § 40-20.1-446 Drug Screening Tests
- § 40-20.1-448 Validity of Licenses Issued by Board of Professional Licensing
- § 40-20.1-450 Construction of Harbor Superintendent

Subchapter Authority: 2 CMC § 2122(j).

Subchapter History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000); Amdts Proposed 16 Com. Reg. 12391

(Sept. 15, 1994);* Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984); Amdts Adopted 6 Com. Reg. 2549 (Jan. 15, 1984); Amdts Proposed 5 Com. Reg. 2490 (Nov. 15, 1983); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

*A notice of adoption for the September 1994 proposed amendments was never published.

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general Commission comment to subchapter 40-10.1.

PL 2-48, the “Commonwealth Ports Authority Act,” codified as amended at 2 CMC §§ 2101-2190, took effect October 8, 1981. It was based on the “Mariana Islands Airport Authority Act” enacted by the Congress of Micronesia as PL 6-58. See the commission comment to 2 CMC § 2101. PL 2-48 created the Commonwealth Ports Authority to implement its provisions and operate the ports of the Commonwealth. See 2 CMC §§ 2121-2122.

Executive Order 94-3 (effective August 23, 1994), reprinted in the commission comment to 1 CMC § 2001, reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. Executive Order 94-3 § 304(a) allocated the Commonwealth Ports Authority to the Department of Public Works for purposes of administration and coordination. PL 11-109 (effective December 21, 1999) vacated section 304(a) in its entirety and reenacted and reinstated all provisions of 2 CMC, division 2, chapter 1, 2 CMC §§ 2101-2190, in effect immediately prior to the effective date of Executive Order 94-3. PL 11-109 §§ 2(b) and 4.

The Commonwealth Ports Authority Act contains special provisions related to rules and regulations. See 2 CMC §§ 2141-2146.

Part 001 - General Provisions

§ 40-20.1-001

[Reserved.]

§ 40-20.1-005 Definitions

(a) Executive Director shall mean the Executive Director of the Commonwealth Ports Authority, and any person acting for him under his authority.

(b) CPA shall mean the Commonwealth Ports Authority created by PL 2-48 [2 CMC §§ 2101-2190].

(c) Territorial waters shall mean all territorial waters contiguous to the islands of Saipan, Tinian, and Rota.

(d) Pilot shall mean a person who holds a valid federal or Trust Territory pilot's license for the waters in which he is operating.

(e) Vessel embraces power boats, ships, tugs, sailing vessels, barges, scows, lighters, ferry boats, and any and all other water craft except public vessels of the United States or of the government of the Northern Mariana Islands.

(f) Berth: A vessel which is moored or made fast to a quay, wharf, dolphin or other structure is said to occupy a berth.

(g) Outside berth: A vessel which moors or makes fast to another vessel which is occupying a berth is said to occupy an outside berth.

(h) Dockage is the charge assessed against a vessel when:

(1) Berthed at or made fast to a quay, wharf, dolphin or other structure;

(2) Occupying an outside berth;

(3) Not tied up to or lying alongside of a quay or wharf but is using such by means of boats, rafts, lighters, or other means.

(i) Wharfage shall mean the charge assessed against all cargo:

(1) Passing or conveyed over, onto or under any quay, wharf or

(2) Passing or conveyed to or from a vessel while such vessel is:

(i) Made fast to a quay, wharf; or

(ii) Moored in any slip, channel, basin or canal; or

(iii) Made fast to another vessel which is made fast to a way,* wharf, or moored in any slip, channel, basin or canal. (Wharfage is solely the charge on cargo for the use of the quay, wharf, slip, channel, basin or canal and does not include charges for any other activity or service.)

*So in original; see the commission comment to this section.

(j) Flammable liquid is any liquid which gives off flammable vapors (as determined by the Tagliabue open cup tester, as used for test of burning oils) at or below a temperature of 80 degrees Fahrenheit.

(k) Shipping container means a cargo carrying unit, equipment or device designed to be transported directly and mechanically between vessels and other forms of transportation, so as to eliminate intermediate dockside re-handling and/or storage of cargo, in addition, such container shall have minimum dimensions of eight feet in width and ten feet in length. Sea Vans, (also called vanpacks) of the type commonly used by companies or firms to ship household goods or personal effects, are excluded from the definition of a shipping container as described herein.

(l) Container cargo means any and all cargo carried and contained in a shipping container.

(m) Container berth means any berth at a Commonwealth Ports Authority dock or pier designated by the Executive Director for preferential or exclusive use by vessels loading or discharging shipping containers.

(n) Tanker means a self-propelled cargo vessel, especially designed and equipped with tanks for the transportation of oil gasoline, molasses or other liquids, fluids and free flowing materials and which is actually transporting therein fuel oil, diesel oil, lubricating oil, gasoline, jet fuels, benzene, kerosene, naphtha or other flammable petroleum or other products.

(o) Tanker line vessel means a cargo ship, primarily designed to carry ordinary freight but equipped with additional bunkers or compartments in which it is actually transporting fuel oil, diesel oil, lubricating oil, gasoline, jet fuels, benzene, kerosene, naphtha, or other flammable petroleum products or like products in excess of its own requirements.

(p) USCG means the United States Coast Guard.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The 1992 Harbor Regulations readopted and republished all of the then existing Harbor Regulations. The Commission, therefore, cites the 1992 regulations in the history sections throughout this subchapter.

The starred word “way” in subsection (i)(2)(iii) probably should be “quay.” Compare 14 Com. Reg. at 9250 (May 26, 1992) and 5 Com. Reg. at 1983 (Apr. 29, 1983). In subsection (i)(2)(i), the Commission replaced the final comma with a semi-colon to correct a manifest error.

Part 100 - General Regulations Governing Harbor Usage

§ 40-20.1-101 General Statement in Conflict with Other Laws, Rules or Regulations

Nothing contained in the rules and regulations in this subchapter shall be construed to limit the powers and authority of the government of the Northern Mariana Islands or any federal agency. If any of these provisions are in conflict with any rule or regulation adopted by the government of the Northern Mariana Islands or any federal agency, the*

*So in original; see the commission comment to this section.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The 1992 amendments erroneously omitted the following language from this section: “rule or regulation more severe in discipline shall prevail.” Compare 14 Com. Reg. at 9251 (May 26, 1992) and 5 Com. Reg. at 1985 (Apr. 29, 1983).

§ 40-20.1-105 Port Superintendent

(a) The Port Superintendent is the designated representative of CPA and its Executive Director, and as such is delegated full authority and jurisdiction over all territorial waters, exclusive of federally restricted areas; and to administer the Harbor Regulations of CPA; and to establish procedures necessary for the efficient and safe operation of docks, harbors, and territorial waters within his jurisdiction.

(b)(1) A master or person in charge of any vessel shall obey and carry into effect any orders given by the Port Superintendent in relation to the plans and manner of bringing vessels to anchorage, entering or leaving a harbor, or any quay or wharf, and shall not move or allow his vessel to be moved in, out, or within a harbor, or anchorage without permission of the Port Superintendent.

(2) The safe navigation of the vessel, including the piloting, is the paramount duty of the master, and the presence of a harbor pilot on the bridge shall in no way relieve the master of his duties. The master remains at all times in full command of the vessel. He shall continue to navigate and shall take bearings and soundings and check compass courses, check radar, and take all actions necessary to safeguard the vessel under his command. In this regard, it shall be the duty of the vessel and her master:

(i) To have posted, and at all time properly instructed, efficient and competent lookouts, each with no other duty to perform, and each with efficient means of rapid communications with the bridge;

(ii) To immediately inform the pilot of all reports by lookouts;

(iii) On radar equipped vessels, to have the radar functioning and manned by a competent observer under instructions to keep the master and the pilot constantly and currently informed of observed targets;

(iv) To arrange for and provide adequate tug assistance, if desired and available, and to arrange for and have available adequate vessel’s lines to assist in tying up the tug or tugs;

(v) For the master to remain on the bridge at all times and to accompany the pilot in his duties on and about the bridge;

(vi) To provide and supervise competent vessel’s personnel;

(vii) To understand and agree that a pilot is employed only to have the benefit of his knowledge of the harbor;

(viii) To understand and agree that, in as much as all orders of the pilot shall be given in the presence of the master and fully concurred with by him, it being further agreed that the pilot is acting in an advisory, and not in a command, capacity and has no authority independent of the master;

(ix) To have at all times an adequate ship's anchor properly manned and ready to drop;

(x) To provide officers conversant with the English language; and if they do not understand, then request, that the pilot give his orders by hand signals thru the master;

(xi) It is compulsory upon, and the duty of the vessel, her owner, master, operators, charterers, or agents to inform the harbor pilot, either before or immediately at his boarding, of vessel peculiarities, including but not limited to the following:

(A) Any defects or deficiencies in the vessel, her personnel, engines or tackle;

(B) Any vessel peculiarities concerning steering, stopping, handling, speed and maneuvering and the propensity of the vessel to steer;

(C) The number and names of the tugs to be supplied to said vessel; and

(D) Any other information, whether or not herein enumerated, that may or might assist the pilot in the pilotage of the vessel.

(E) It is understood and agreed, and is the essence of the contract under which pilotage services are proffered and rendered, and are requested and accepted by the vessel, that the services of the pilot are requested and accepted on the express understanding that such pilotage services are given, done or performed solely in the pilot's capacity as the servant of the vessel and of her owner, master, operator, charterers or agents, and not otherwise, and the owners, master, operators, charterers and agents of the vessel expressly covenant and agree to comply with the provision.

(c) The berthing of vessels at the Commonwealth Ports Authority's quays or wharves under its jurisdiction shall be at the discretion of the Port Superintendent.

(d) The Master of every vessel and the crew thereof, when requested by the Port Superintendent, shall give and afford the Port Superintendent all possible aid in the performance of any of his duties in relation to such vessel.

(e) If by reason of there being no person aboard a vessel with proper authority, or if by reason of an insufficient number of persons aboard such vessel, or if the master and/or crew of a vessel refuses to aid the Port Superintendent in moving, pumping, mooring and unmooring of such vessel when so directed by the Port Superintendent, the Port Superintendent is empowered to move, pump, moor or unmoor, place or remove such vessel. To this end, the Port Superintendent may, if necessary, hire such assistance, equipment and tackle and/or purchase and put aboard such quantity of ballast as to him seems requisite, all at the expense of the master, owners, or agents of such vessel. All costs shall be paid to CPA before permission for departure is given. CPA shall in no way be liable for any damage or loss occurring to any vessel in consequence of such proceedings.

(f) No person without the consent of the Port Superintendent shall cut or cast off any mooring lines, rope or tackle made fast or attached to any vessel, quay, wharf, mooring,

buoy or other place when the same has been fastened or attached by the Port Superintendent, or by his order.

(g) Typhoon Condition II: masters, owners and agents of vessels greater than 300 gross tons will comply with all applicable rules, regulations, and orders governing typhoon conditions and will proceed to clear the quay, wharf or dolphins which may be damaged or destroyed during such periods. Failure of masters, owners, and/or agents to comply with the said rules, regulations or orders will lay all responsibility of damages caused by vessel upon them.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The first paragraph of subsection (b) was not designated. The Commission designated it subsection (b)(1) and redesignated subsection (b)(2) accordingly.

§ 40-20.1-110 Consent to Regulations

(a) The engines of any vessel lying at any quay, wharf, dolphin, or other structure shall not be tried or tested except by permission of the Port Superintendent. This shall not apply to routine pre-departure warming up of engines.

(b) The speed of engines being tried or tested as referred to in subsection (a) shall not exceed the speed of such engines when operated under a dead slow bell.

(c) Any vessel trying her engines as previously referred to will be held responsible for any damage to quays, wharves, or other vessels as a result of such trying or testing of her engines.

(d) No vessel shall blow tubes or emit unnecessary smoke or polluting vapors of any kind at any time while in port.

(e) No vessel shall transfer or shift fuel from one tank to another without the permission of the USCG.

(f) No vessel shall do any gas welding, electrical welding, or carry on burning operations, before obtaining a permit from the USCG.

(g) No garbage, rubbish or trash shall be dumped on any quays or wharves, or into the waters of the harbor. Pollution of any kind will not be tolerated, and penalties as provided by law will be imposed.

(h)(1) The master of every vessel entering a port of the Commonwealth shall either

- (i) Seal the outlet on such vessel's sewage disposal system, or
- (ii) Place a dye in the sewage disposal system which will clearly identify the source of any raw sewage discharged by such vessel. No vessel may remain in any port of the Commonwealth unless its master or agent shall have certified compliance with the provision of this subparagraph.

(2) The Port Superintendent shall have the authority under this subchapter to inspect any vessel or craft to ensure that proper standards of health and sanitation are being maintained. Should improper conditions be found to exist, the appropriate health authorities will be notified to take whatever actions are deemed necessary.

(3) Upon the arrival of any vessel in any port of the Commonwealth, the Port Superintendent shall promptly seal the discharge outlet on such vessel's sewage disposal system, with a locking mechanism which shall prevent the discharge of sewage from such sewage disposal system. The Port Superintendent shall not remove such locking mechanism until the vessel is ready to depart from the port. It shall be a violation of these regulations

- (i) For any vessel having a sewage disposal system to remain in any port of the Commonwealth while such system shall not be locked in accordance with the provisions of this subsection; and

- (ii) For any person, other than the Port Superintendent or his designee, to tamper with or remove such locking system.

(i) All vessels over 300 gross tons and all foreign vessels entering or leaving commercial harbors of CPA will have an anchor clear and in readiness to let go if required.

(j) No person shall make fast any rope or mooring piles, bitts, or cleats as provided for that purpose.

(k) All vessels other than barges and vessels under 300 gross tons lying alongside of a quay or wharf shall:

- (1) At all times have a safe and proper gangway to the wharf, and

- (2) Between the hours of sunset and sunrise display a light visible from the harbor or fairway.

(l) The master, owners or agents of a vessel arriving at, or departing from, a harbor shall notify the Port Superintendent as soon as practicable of the hour or expected arrival, including arrival draft, and long tonnage of cargo, and also the estimated time of departure; and in the event of a change in time, the Port Superintendent shall be notified immediately.

(m)(1) No person or persons shall cause or permit any vessel, raft, log or other floating object to come alongside of, or to be moored to or near any quay, wharf or pier in any manner that may cause damage to such quay, wharf, or pier.

(2) The Port Superintendent shall remove any vessel, raft, log or other floating object which may cause damage or interfere with the use of any quay or wharf to some suitable

place. The owner thereof, if known, shall be notified forthwith in writing of such removal; but if the owner is not known, due notice of such removal shall be given by posting a notice in a conspicuous public place. If within ten days after the date of giving or posting such notice no claim is made for this property, the Port Superintendent may sell or otherwise dispose of such vessel, log, raft, or other floating object and apply the proceeds of such sale to defray the expenses of CPA and credit the remainder if any, to the owner. CPA shall not be responsible for loss or damage to such vessel, log, raft, or other floating object.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The 1984 amendments added subsection (h)(3).

§ 40-20.1-115Explosives

Handling of shipments of explosive and other dangerous articles, as defined by CGFR-52-8, 17 FR, 6464 July 17, 1952, unless otherwise noted, will be permitted only after a full compliance by shipper, carrier, and terminal operator with all applicable rules and regulations of that agency, and of the U.S. Coast Guard governing the packaging, marking, labeling, handling and transporting of such articles. Failure to comply with such regulations will be considered a violation of this subchapter.

Modified, 1 CMC § 3806(d), (g).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The Commission corrected the spelling of “labeling.”

§ 40-20.1-120Damages to Quays, Wharves, Wharf Structures, Utilities and Cargo Handling and Storage Areas

The agents, charterers, master or owners requesting a berth, cargo space allocation, or use of harbor facilities incident to the receiving, discharging, loading, and removal of cargo will be responsible:

(a) For all damage caused to CPA property by himself, his employees, or any agent, subcontractor or materials handling firm under contract to them doing the discharging, loading, repairing or bunkering of a vessel.

(b) For providing necessary protection to harbor facilities to protect them from all damages in excess of reasonable wear and tear.

(c) Repairs to CPA property: Any person responsible for damage to CPA property shall make repairs in accordance with CPA specifications. If the repairs are completed improperly or if the responsible party does not undertake the repairs within a reasonable time, CPA will act to repair the damage and will bill the responsible party as follows:

(1) The direct labor charges and cost of materials plus an overhead charge of 25 percent if the repairs are made by CPA employees.

(2) The contractor's charges plus an administrative charge of 25 percent if the repairs are made by a contractor hired by CPA.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-125 Access to Vessels

The Port Superintendent shall be permitted access to enter upon and inspect any vessel to ascertain the kind and quantity of cargo thereon, and upon any rented or leased premises of CPA to inspect such premises as the interest of CPA may require.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-130 Compliance with Federal and Government of the Northern Mariana Islands Laws and Regulations

Use of harbors and harbor facilities is subject to compliance with all applicable federal and CNMI laws, ordinances, rules and regulations. Particular attention is directed to:

(a) Regulations relating to the use of rat guards, and other measures required to prevent rodents from leaving the vessel.

(b) Regulations pertaining to air and water pollution.

(c) Regulations pertaining to plant and animal quarantine matters.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-135 Communications Regarding Harbor Regulations

Requests and complaints from shippers on matters relating to the Harbor Regulations and Tariff must be made to the Executive Director in writing.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-140 Traffic Control

(a) No vessel shall anchor in any fairway of any channel so as to obstruct the approach to any wharf, as per U.S. Coast Guard Rules and Regulations Part 110, "Anchorage Regulations."

(b) Maximum speed of vessels within channels and harbors:

(1) All vessels over sixty-five feet in length shall proceed at a rate of speed (except in case of emergency) commensurate with safe navigation and slow enough so as not to cause damage to other vessels and/or property.

(2) Vessels under sixty-five feet may proceed at a rate of speed not to exceed ten nautical miles per hour.

(3) Nothing herein shall preclude the Port Superintendent from setting different rates of speed to meet special conditions.

(c) Tugs with or without tows and all other vessels more than sixty-five feet in length or exceeding three hundred gross tons will advise the Port Superintendent of all moves into, within, or departing the harbor, giving the destination, and the time of leaving the berth. All such vessels will operate under the direction of the Port Superintendent.

(d) Priorities and scheduling of vessel movements and berth assignments in CNMI harbors:

(1) Priorities for vessel movements other than for typhoons and unless otherwise authorized by the Port Superintendent, shall be as follows:

(i) Government vessels when responding to emergencies;

(ii) Vessels stopping to discharge sick or injured persons;

(iii) Passenger vessels. (Note: The harbor is to be closed to other traffic for an adequate time to permit the safe arrival or departure of passenger vessels);

(iv) Inbound vessels scheduled to load or discharge cargo upon arrival:

(A) Container/cargo vessels;

(B) Other cargo vessels;

(C) Tug and tow;

(D) Tankers.

(v) Shift cargo vessels when required for further cargo handling;

(vi) Outbound vessels with inter island cargo;

(vii) Incoming vessels arriving for repairs or bunkers;

(viii) All others.

(2) Priorities of vessel sailing in the event of a typhoon warning unless otherwise authorized the Port Superintendent shall be:

- (i) Government vessels;
- (ii) Tankers;
- (iii) Vessels with explosive cargo;
- (iv) Passenger vessels;
- (v) Freighters;
- (vi) Others.

(3) Scheduling procedures: Agents shall submit the following to the Port Superintendents:

- (i) Copies of passenger vessel schedules as far in advance as possible;
- (ii) At the earliest possible time, any ship scheduled for port arrival. (This shall constitute a tentative booking.)
- (iii) Prior to 11:00 a.m., the day before a vessel's arrival, or as soon thereafter possible, submit an ETA to the Port Superintendent.
- (iv) A schedule shall then be prepared by the Port Superintendent. The schedule shall be based on the priorities listed above and on the final ETA, and shall be published by 2:00 p.m. each day. Berthing assignments for changes in schedules will be made on a first-come, first-served and a not-to-interfere basis with the established schedule.
- (v) Prior to 11:00 a.m., daily, submit known departures and shifts for the following day to the Port Superintendent. Changes in schedules will be made on a first-come, first-served basis, in accordance with the priorities above and on a not-to-interfere basis with the established schedule.
- (vi) Vessels arriving and/or departing at the same hour will be handled in accordance with the priority described above. Within any category the vessel that was assigned confirmed booking first will be permitted to move first unless the vessel is late or operating conditions in the harbor dictate otherwise.
- (vii) Agents are requested to advise the Port Superintendent at the earliest time when vessels that have been scheduled to call change or cancel their ETA or itineraries by more than 24 hours.

(4) Other requirements:

- (i) Application for berth assignment shall include information as to any peculiar requirements; i.e., camels needed for side port bunkering, whether one side has to be alongside pier for repairs or other special reasons, etc. Also, indicate any unusual physical features that would affect piloting or mooring, such as engine or steering gear problems, etc.
- (ii) Vessels using side ports for bunkering, storing, passenger debarking, or other reasons, should have side ports closed on approaching the berth, in order to avoid damage to the pier or to the side port.
- (iii) Except for those vessels entering to load petroleum products or for special repairs requiring minimum draft, all vessels, will be ballasted so as to reduce freeboard to a reasonable degree, and to provide positive stability as required.
- (iv) Agents shall arrange for proper and adequate linemen on time for all vessel arrivals, shifts and departures.

(v) Pilots and tugs: Agents shall make all arrangements for the employment of pilots and adequate tug assistance, and will arrange and have available adequate vessel's lines to assist in tying up the tug or tugs.

(vi) It is the duty of the vessel's agents to keep Customs, Immigration, and Agricultural Quarantine advised as to the docking time of vessels being handled by them. If the vessel carries any live fish or wildlife, or parts or products of any fish or wildlife protected by any federal or Commonwealth law as* regulations, the vessels' agent shall also advise the Fish and Wildlife Division of such docking time. It is not the responsibility of CPA to arrange for any government officials to board and clear vessels.

(vii) All changes in a vessel's arrival time, shifting time or sailing time must be made more than two hours in advance of the previously booked time.

(viii) All commercial vessels using Port Authority wharves, piers, or other dock facilities must use shore provided line handlers for reasons of safety. Personnel from the Port Superintendent's Office are not to be used in lieu of other line handlers.

*So in original; probably should be "or."

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-145 Application of Other Laws and Regulations

Nothing in this subchapter is intended to avoid or alter the application of any other applicable federal or Commonwealth laws or regulations, and this subchapter shall be construed as supplementary to rather than in substitution of the same.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-150 Port Security

Whenever a vessel is in port at any time other than normal government working hours, CPA will endeavor to assign a security officer to duty at the port. Security officers so assigned will utilize their best efforts to assure compliance with this subchapter, and all of the laws and regulations of the United States government and the Commonwealth government in respect of the operation of vessels and the conduct of persons in and at the ports and harbors of the Commonwealth; and shall promptly report any violation thereof to the Port Superintendent. The Port Superintendent shall promptly notify the master or agent of any such violation, and if such violation is not corrected promptly, shall report

the same to the Executive Director and to all concerned government agencies for appropriate action.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984).

§ 40-20.1-155Environmental Control

(a) It is the policy of CPA that the air, land, and water environment of the ports and harbors of the Commonwealth shall be preserved, to the maximum extent possible. Accordingly, the attention of all masters, vessel owners, and agents is drawn to the provisions of §§ 40-20.1-110(g) and (h)(1), 40-20.1-248(b)-(e), and § 40-20.1-250(a) of this subchapter; and all such persons are reminded that, pursuant to the provisions of section 15 of Public Law 2-48 [2 CMC § 2145], any person who violates any of the said regulations is punishable by criminal penalties consisting of a fine not exceeding \$1000, or by imprisonment not exceeding three months, or both, and civil penalties not exceeding \$1000 for each day during which a violation of a regulation continues.

(b) The Executive Director shall vigorously enforce the aforesaid regulations. To this end, the Executive Director shall

(1) Promptly report all violators to the Attorney General, for criminal prosecution; and

(2) Promptly take all appropriate steps to levy and collect civil penalties as authorized by law.

Modified, 1 CMC § 3806(c), (d), (e), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The reference to PL 2-48 § 15 in subsection (a) is in error. The referenced provisions appear in PL 2-48 § 16, codified at 2 CMC § 2145. The Commission has provided the citation to the correct Commonwealth Code section in the brackets.

§ 40-20.1-160Vessels to Have Agents

(a) Except in the event of an emergency, every vessel which enters a port of the Commonwealth shall have an agent duly licensed to do business as such with the

Commonwealth. Each agent shall have a resident employee on the island in which the port of entry is situated.

(b) Every vessel which enters a port of the Commonwealth and which does not have an agent at the time of its entry shall utilize its best efforts to obtain an agent within one business day after its arrival in port.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-20.1-165 Payment of Port Fees and Charges

(a) The agent of a vessel which enters a port of the Commonwealth shall, no later than upon the entry of such vessel into such port, notify the Port Superintendent of the agency relationship.

(b) Any vessel which does not have an agent authorized to do business in, and having a place of business in the Commonwealth, which enters a port of the Commonwealth, shall within 24 hours of its entry, deposit with the Port Superintendent of the port a sum estimated by the Port Superintendent to be sufficient to cover all fees and charges payable under this subchapter and under CPA's Terminal Tariff [NMIAC, title 40, subchapter 20.2]. The Port Superintendent may, in his discretion, require an addition to such deposit at any time while the vessel remains in port if, in his opinion, the fees and charges payable by such vessel exceed the amount currently on deposit. No such vessel shall be granted clearance to depart from a port of the Commonwealth unless and until it shall have on deposit with the Port Superintendent a deposit deemed by him to be sufficient to cover all fees and charges payable by the vessel.

(c) All fees and charges payable under this subchapter and under CPA's Terminal Tariff [NMIAC, title 40, subchapter 20.2] shall be paid within thirty days of demand therefor. In the event that such fees and charges are not paid within thirty days of demand, such fees and charges shall bear interest at a rate of 12% per annum from the date that the demand was made; and in addition, the person or persons liable therefor shall additionally be liable for a penalty of \$1000 by virtue of the failure to pay such fees and charges within such thirty-day period. No vessel which has failed to pay any fees and charges payable under this subchapter or under CPA's Terminal Tariff [NMIAC, title 40, subchapter 20.2] within thirty days of demand therefor, and no other vessel owned by the owners of such vessel, shall be permitted to enter any port of the Commonwealth for so long as such fees and charges, together with interest and penalty as provided for herein, remain unpaid.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

Part 200 - Safety, Cleanliness and Use of Facilities

§ 40-20.1-201 Fire Alarm

In the event of fire occurring on board any vessel in port, except vessels underway, such vessels will sound five prolonged blasts of the whistle or siren as an alarm indicating fire on board or at the dock to which the vessel is moored. Such signal may be repeated at intervals to attract attention and is not a substitute for, but shall be used in addition to, other means of reporting a fire. The words “prolonged blast” shall mean a blast from four to six seconds in duration. This signal shall not be used for any other purpose.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: Many of the original sections in this part did not have titles. The Commission created the section titles where necessary.

§ 40-20.1-202 Vessels Containing Explosives

No vessel containing more than 25 short tons of class A, 25 short tons of class B, and an unlimited amount of class C explosives (net explosive content) shall enter or be loaded in Commonwealth harbors except on written permission of the Executive Director. The Port Superintendent shall see for* the specific berth to be used and any special instructions to be followed. No class A explosives, as defined by the U.S. Coast Guard, will be admitted in any harbor in quantities in excess of the limitations established by the U.S. Coast Guard. Advance copy of manifest should be submitted with application.

*So in original; see the commission comment to this section.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The starred language “see for” probably should be “set forth.” Compare 14 Com. Reg. at 9264 (May 26, 1992) (“see for”) and 5 Com. Reg. at 1999 (Apr. 29, 1983) (“set for”).

§ 40-20.1-204 Loading or Unloading Explosives

All handling and loading or unloading of explosives shall be done in a safe and careful manner and shall be in accordance with federal regulations pertinent thereto in force at the time.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-206 Hauling Explosives

All hauling of explosives away from or to the pier shall be done in a safe and careful manner and shall be in accordance with regulations of the Department of Public Safety.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-208 Nitrate of Soda; Sulphur

(a) No nitrate of soda, nitrate of ammonia, sulphur or other similar materials shall be stored or left upon any wharf for more than four hours unless packed in sound and non-leaking containers. Such materials shall be under the continuous care of a competent watchman satisfactory to the Port Superintendent until removed. The cost of such watchmen shall not be borne by CPA.

(b) Masters, owners or agents of vessels or consignees of cargoes of nitrate of soda, sulphur or other similar materials, during the process of loading, and removing such cargoes, must at all times keep the wharf swept clean and free of such materials.

(c) If loose nitrate of soda, sulphur or other similar materials are to be discharged onto or loaded from any wharf or structure at any harbor it shall be placed directly into the carrier and immediately removed. A protective device approved by the Port Superintendent shall be used during the period of loading or unloading to prevent the materials being handled from falling upon the wharf structure.

(d) During the process of handling nitrate of soda, sulphur or other similar materials on any wharf at any harbor under control of CPA, it shall be obligatory on the part of the master, owners or agents of a vessel to provide containers of not less than fifty gallons capacity filled with a solution of nitrate of soda and water at a distance of not more than fifty feet apart, with suitable buckets placed alongside each container, for the purpose of fighting any fire which may occur in such cargo.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

§ 40-20.1-210Acids

(a) Acids of a dangerous character such as sulphuric, muriatic and nitric acids shall be removed from the wharf immediately upon discharge from the vessel, and no such acid shall be put upon a wharf under control of CPA for shipment until the carrier is ready to receive it. Permission of the Port Superintendent must be secured in the event it becomes necessary to handle such cargoes at times other than specified.

(b) Electric storage batteries containing electrolyte or corrosive battery fluid of non-spillable type, protected against short circuits and completely and securely in boxes, are exempt from this provision.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-20.1-212Leaking Containers Prohibited

No gasoline, distillate, kerosene, benzene, naphtha, turpentine, paints, oils or other flammable substances in leaky containers shall be delivered onto any wharf under the control of CPA. All such substances unloaded from any vessel in a leaky container shall be removed immediately.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-214Flame Treatment of Combustible Materials

No combustible materials such as pitch, tar, resin or oil shall be flame treated on board any vessel within Commonwealth harbors without the permission of the Port Superintendent.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-216Fumigation of Vessels

No vessel shall be fumigated or smoked at any wharf under the control of CPA without permission in writing from the Port Superintendent. If fumigation is to be with cyanogen products or hydrocyanic acid gas in any form, however generated, the applicant or his agent shall be in possession of a permit as required by regulations and shall have a watchman on duty so long as any danger exists, in order that no one, unless properly entitled to do so, be allowed to board such vessel.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-218Spark Arresters Required

All fuel burning steam generating appliances when used on any wharf under control of the Port Authority, or on any scow, pile driver or other vessel working alongside or near any wharf under control of the Port Authority shall be equipped with spark arresters satisfactory to the Port Superintendent. At the close of each day's work all ashes, cinders, waste or other deposits caused by such appliances upon any wharf shall be promptly removed and shall not be disposed of in, near or upon waters of the harbor.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-220Repairs

No person shall make any repairs or do any kind of manufacturing, construction or maintenance work on any wharf without the permission of the Port Superintendent.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-222Smoking Prohibited

Excepting only within areas designated by the Port Superintendent and plainly marked “Smoking Area,” smoking is positively prohibited at all times within any freight shed, or upon any wharf apron, and during the time cargo is being loaded, unloaded or stored on any unshedded pier under control of CPA, and no person shall enter into, stand in, or under, or pass through any such wharf or structure with a lighted pipe, cigar, cigarette, match, fire or any flame of whatever nature.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-224Use of Explosives Prohibited

The use of explosives on land, on any wharf, or in any shed or other structure under the control of CPA, or in the waters in the immediate vicinity of the same, without the written approval of the Executive Director, is strictly prohibited.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-226Charge for Cleaning of Harbor Facilities

In cases where CPA takes over the cleaning of wharves, sheds or open areas the charge thereof shall be computed at the total cost of labor and/or materials used and shall be assessed against the vessel which is responsible for the necessity of cleaning.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-228Owner of Mobile Equipment Identified

All mobile equipment used on any property under the control of CPA in connection with the handling of cargo or shipping containers, such as forklifts, cranes, tractors, straddle trucks, or other equipment, shall be clearly identified as to the owner thereof.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-230 Unpermitted Vehicles Prohibited

No vehicle shall be admitted upon any wharf or in any other area used for the storage of cargo except for the purpose of delivering or picking up freight unless the owner thereof shall have been granted a permit by the Port Superintendent.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-232 Speed Limits

(a) Trucks and other vehicles entering upon a wharf under control of CPA for the purpose of delivering or picking up freight shall not be driven while on such wharf or open area at a speed greater than ten miles per hour. Motor equipment used in handling freight while cargo loading and unloading operations are in progress under the direct supervision of a stevedoring foreman shall not be operated at a speed greater than ten miles per hour.

(b) Trucks and other vehicles operating in container yards shall not be driven at a speed greater than fifteen miles per hour.

(c) Vehicles on roadways adjacent to wharves and pier sheds shall not be driven at a speed greater than fifteen miles per hour, unless otherwise indicated by appropriate traffic signs.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: In subsection (b), the Commission changed “hours” to “hour” to correct a manifest error.

§ 40-20.1-234 Emergency and Government Vehicles

Vehicles conveying or arriving to convey the sick or the infirm, ambulance and vehicles of hospitals and or the health or police departments, or government vehicles on official business may enter upon wharves without a permit.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-236 Vehicles as Freight Excepted

The provisions of § 40-20.1-230 shall not apply to vehicles left on a wharf for the purpose of shipping the same on any vessel nor shall they apply to any vehicle which has been discharged as freight.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-238 Fowl, Animals and Livestock

No fowl, animal, or livestock of any kind shall be brought onto any wharf for shipment, unless it has been properly booked in advance for immediate shipment. No fowl, animal or livestock of any kind shall be allowed to remain on any wharf for a period longer than six hours without being fed and watered. After the fowl, animal or livestock shall have been unloaded on a wharf, it shall be removed from the same within twenty-four hours. No shipment of such fowl, animal or livestock subject to quarantine shall be unloaded on a wharf by a shipping company or its agents unless first inspected and released by the Agricultural Quarantine Office or unless arrangements have been made for acceptance for quarantine. All such fowl, animals or livestock requiring quarantine shall be removed from the wharf within eighteen hours. All expenses incurred in the care and maintenance of such fowl, animals or livestock while on a wharf shall be paid by the consignees thereof and shall constitute a lien upon same until such charges are paid. It is the responsibility of the carrier and its agent to comply with all federal and local laws and regulations applicable to the shipment and importation of domestic fowls, animals, and livestock, as well as fish and wildlife.

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-240 Private Use of Harbor Property and Facilities

(a) General statement: No regular or extensive use of any harbor property or facility for private gain or purpose shall be permitted without corresponding and reasonable benefits and returns to the public.

(b) Business activities: No person shall engage in any business or commercial activity at any harbor without prior written approval of the Executive Director.

(c) Solicitations and advertisements: Without limiting its generality, the term “engage in any business or commercial activity” as used above includes solicitation and distribution of advertisements or circulars intended for private gain or purpose.

(d) Signs: No person shall post or display any signs at any harbor without the prior written approval of the Executive Director except that approval will not be required for the posting or displaying of any sign on a vessel which relates solely to the sale of such vessel if the maximum dimensions of such sign do not exceed three feet.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-242 Vehicles under Port Superintendent’s Control

Any vehicle operating on any wharf under the control of CPA shall be under the control of the Port Superintendent.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-244 Placement of Goods and Equipment

Any person handling goods or using equipment on a wharf under the control of CPA or bringing goods thereon for shipment, shall place, store or stack such goods or equipment in such a way as not to be an impediment to the approaches to the same, nor an obstacle to the removal of other goods, nor to cause damage to the wharf. No goods shall be so placed as to restrict or prevent the use of mooring bitts, cleats, bollards or other devices used for mooring purposes. No goods shall be so placed as to restrict or prevent the use of tracks, water connections, fire hydrants, gutters, oil and bunker connections, or drains.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-246 Wharf Closure; Suspension of Port Operations

(a) The Port Superintendent may close the wharves or any portion thereof and regulate and control the use of the same whenever in his opinion it is advisable to do so. No person shall enter whenever in his opinion it is advisable to refrain from doing so. No person shall enter upon a wharf so closed without the permission of the Port Superintendent.

(b) Suspension of Port Operations:

(1) The Executive Director may order the suspension of any loading, or unloading operation, bunkering, repairs or other operations as necessary to insure the safety, health and welfare of the public.

(2) At the request of another CNMI agency or department, the U.S. Coast Guard, or other federal agency, the Executive Director after due consideration and for the proper cause may order the suspension of operations.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-248 Objectionable Materials

(a) No goods or articles of any description which, in the opinion of the port Superintendent, may be likely to cause damage to CPA property shall be landed, discharged or taken upon such property.

(b) No person shall place or leave any rubbish, ashes or trash on any wharf except in areas provided therefor without permission of the Port Superintendent.

(c) No objectionable materials such as dead animals, decaying or putrefying vegetable matter, manure, or bedding straw shall be left on any wharf but shall be removed immediately, under the direct supervision of an authorized agricultural quarantine inspector.

(d) No dead animal shall be left in the waters or on the shores of any harbor or upon any reef adjacent to any such harbor.

(e) No dead animal shall be moved through the waters of any harbor.

(f) Any goods which, in the opinion of the Port Superintendent, are unfit to remain upon any wharf or may be harmful to other goods on such wharf shall, if necessary, be removed by the Port Superintendent at the expense of the owner or consignee.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-250 Garbage, Ballast Disposal

(a) No rubbish, swill, garbage or refuse shall be thrown, washed overboard or placed in any harbor. No garbage may be removed from any vessel in port at any time, and all garbage on a vessel shall be placed in suitable containers, covered and secured to prevent spillage or exposure. No garbage on board any vessel shall be dumped into the ocean within the territorial waters of the Commonwealth.

(b) No ballast, rock, stone, slate, slag, gravel, sand, earth, cinders, rubbish, filth, or other noxious substance shall be deposited on any of the shores, lands or other property under the control of CPA, unless approved by the Executive Director.

(c) When any ballast, rock, stone, sand, fertilizer, grain, or other loose material is being handled between a vessel and any wharf or vice-versa, or between two vessels, within any harbor, a canvas chute or other contrivance satisfactory to the Port Superintendent shall be used to prevent any part of the substance being handled from falling into the waters below, or onto the wharf or any part of it.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-252 Disposal of Derelict Vessels, Large Objects

When any owner, agent or individual contemplates or plans the disposal or salvage of a derelict craft, vessel or other object of any size, type or description, by transporting across, within or on navigable waters, whether a part or whole craft, or whether a floating or suspended object of any sort which might, if sunk, lost or abandoned in the harbors, channels or shore waters become hazardous to navigation, to dredging or to other operations of the CNMI or federal government, or the public in those waters, he shall obtain the written permission of the Executive Director before taking such action.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-254 Objects Abandoned in Navigable Waters

Should any owner, agent or individual lose, sink, drop or abandon any floating or sinking object on or in the navigable waters and/or shore waters of the Commonwealth, he shall immediately notify the Port Superintendent and shall immediately take such action as is necessary for removal of the object. Upon failure on the part of the owner to remove such object, CPA will take such actions through federal or commercial channels as are necessary for such removal and will charge all costs incurred by it in effecting the necessary removal to the owner. The Executive Director may require the posting of a bond to assure such payment.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-256 Connection to Dockside Water Supply System

(a) No person shall connect a vessel's water supply system, siphon or other water-operated device, equipment or mechanism to a potable water supply system, or operate any water-operated device, equipment or mechanism connected to the water supply system, unless an approved backflow prevention device has been installed at the faucet or other point of connection. An "approved backflow prevention device" means a backflow prevention device that meets the requirements contained in standard 1001, American Society of Sanitary Engineers or the Uniform Plumbing Code adopted by the International Association of Plumbing and Mechanical Officials (IAPMO).

(b) It shall be illegal to connect up any vessel's water supply system to a dockside water supply system without permission of the Port Superintendent.

(c) No potable water may be supplied from a dockside water supply outlet without the use of a water meter.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-258 Dumping at Sea of Sinkable Objects

When any owner, agent or individual contemplates the dumping of sinkable materials at sea by hauling across, within or on the navigable and/or shore waters of the Commonwealth, he shall notify and obtain the permission of the Executive Director prior to movement and shall not fail to perform any duty imposed thereby. All dumping at sea of sinkable objects or materials (the dumping of floating objects is strictly prohibited) shall be done in the areas designated by the Secretary of the Army for such disposal. (Refer to Corps of Engineers, U.S. Army, for information concerning location of such areas.)

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-260 Loading of Flammable Liquids

Loading or unloading of flammable liquids shall be in strict accordance with applicable federal laws and regulations. (See title 33, CFR, subchapter L, part 126.15(o).)

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-262 Welding and Burning Operations

Welding and burning operations on piers and wharves and aboard vessels:

(a)(1) Permits: Before any welding or burning operations can be done on a wharf or waterfront facility, or on a vessel moored thereto, it is required that the party intending to do such work secure a permit from the U.S. Coast Guard. In the event ammunition or other dangerous cargo is in close proximity or on board the ship, the U.S. Coast Guard, and other appropriate federal and CNMI agencies shall be notified, and an inspection will be conducted, and if in their opinion the welding and/or burning operations will not involve the possibility of a fire or explosion, permission may be granted to perform the work.

(2) Before any welding, burning, spark, or flameproducing operations are undertaken aboard any ship dock, wharf, or waterfront facility, all spaces subject to the accumulation of dangerous gases or gas producing materials, in or on which hot work is to be performed, and such other spaces as may be required by the U.S. Coast Guard having jurisdiction over such operations, or required under the provisions of the American Bureau of Shipping, National Fire Protection Association Standards, Bureau of Ships, (U.S. Navy) manual, or U.S. Coast Guard Regulations, shall be inspected by American Bureau of Shipping, certified chemist or other shipyard competent person who is licensed or certified by the National Fire Protection Association.

(i) Such spaces shall include, but shall not be limited to, oil and ballast tanks, cofferdams, void spaces, boiler and machinery spaces, pump rooms, compartments treated with combustible rust preventatives, including hallow rudders and skags, paint lockers and shaft alleys.

(ii) On completion of his inspection, said chemist shall issue a certificate setting forth in writing the conditions found at the time of inspection and indicating by appropriate designations whether, in his judgment, the contemplated repairs or alterations can be undertaken with safety.

(iii) One copy of the chemist's certificate shall accompany the application for a permit, and one copy shall be left aboard ship or waterfront facility, preferably posted in a conspicuous place near the gangway.

(iv) Hot work shall be done in the locations and under the procedures as designated in writing on the permit and chemist's certificate.

(v) Loading or moving of cargo or the movement of the ship from one location to another within the shipyard or installation for which a chemist's certificate has been

issued is permissible without requiring an additional inspection and the issuance of a chemist's certificate when in the judgment of the inspecting authority such movement has not been sufficient to create a hazardous situation. However, the movement of ships from one jurisdiction area to another shall require an additional inspection and the issuance of a chemist's certificate before continuing hot work.

(vi) All welding and burning operations shall be under the supervision and control of a competent foreman or supervisor who shall see that all regulations pertaining to welding or burning operations are fulfilled.

(b) Operations: In all types of operations, fire prevention shall be the watchword, and all workmen should bear in mind that to prevent fire is their individual responsibility. All combustible materials must be removed from the area in which the welding and burning operations are being conducted, or properly protected if removal is not feasible.

(1)(i) Welding or burning operations shall not be conducted around hatches or companionways, unless they are sealed with their own cover or door. In the event that this is not possible, an asbestos blanket or other flame-proof material may be provided in their place. Such substitutions shall meet with the approval of the inspection authority issuing the permit.

(ii) When welding or burning operations are being conducted in such locations that sparks could spatter or fly over the outside of the ship's hull, a protective shield composed of metal or other flameproof material shall be provided to prevent the sparks from igniting the wharf or dock, barges, or oil slicks on the water, or other combustible materials.

(iii) Water charged fire mains, with hoses and nozzles attached of sufficient length so that the water can reach the bases of any fire which may occur, shall be on each deck of the ship where welding or burning operations are being conducted. A sufficient trained number of trained fire watchers, (number of watchers to be approved by the U.S. Coast Guard) shall be on board and assigned to each group or individual welder or burner to watch for and extinguish incipient fires. Each fire watcher shall be provided with an approved fire extinguisher or hose line, to control any fire which may occur during the welding or burning operations. All firemen and fire watchers shall be instructed by their foremen or supervisor as to their duties in respect to fire prevention and the manner of contacting their plant, industrial, or Department of Public Safety, fire departments when needed.

(iv) When welding or burning operations are conducted on a wooden wharf, or a fire resistant paved wharf with cracks or crevices, the entire surrounding area should be drenched with water by means of a hose line and kept wet during the entire operation to prevent sparks from igniting the flooring or timbers below.

(2) No refueling of equipment with flammable petroleum products will be permitted on any pier or wharf under the control of CPA.

(3)(i) On waterfront facilities which are used for repair work, no gasoline or other flammable liquid shall be stored except as required for normal operations and then only when stored in approved metal lockers and in quantities approved by the Port Superintendent.

(ii) Petroleum based cleaning fluid which has been treated to satisfactorily reduce the flash point may be used for washing grease from machinery parts in an approved location

safe from hot work operations. All paint or other flammable liquid materials shall be kept securely covered except when in actual use.

(4) Gasoline-powered generators or compressors shall not be operated on the ship, but must be kept on the wharf. Said equipment shall be equipped with a spark arrestor on the exhaust pipe, and the drip pan set in a position to protect the wharf in the event of any gasoline or oil being spilled. An attendant shall stand by at all times equipped with an approved fire extinguisher to extinguish any fires which may occur. At the conclusion of operations, said gasoline-powered equipment shall be removed from the wharf. Where insulated wire cables are in the patch* of traffic, they shall be protected from damage by crossovers, and where they lead into the ship they shall be protected from chafing damage by a protective wrapped covering. Where electrical cables lead from one ship to another, the same protective measures shall be complied with.

(5) When acetylene or oxygen cylinders are used, the following precautions shall be followed at all times:

(i) Compressed gas cylinders shall be used in a vertical position only, and shall be secured at all times to prevent falling. Cylinders, when in use, shall be kept on the pier at all times.

(ii) Do not drop cylinders; ruptured cylinders may explode. Do not use cylinders for rollers, anvils, or supports.

(iii) When cylinders are not in use, close valves and replace protective caps.

(iv) Cylinders shall not be handled by cranes, except when they are placed in specially constructed bottle racks or in a skip box. Under no circumstances shall gas cylinders be hoisted by a magnet, manila line, steel cable, chains, slings or nets.

(v) Secure cylinders on a shelled** truck so they can be easily moved if a fire occurs in the immediate vicinity.

(vi) When permanently installed on a pier and exposed to the sun, cylinders shall be provided with adequate protection.

(vii) Valve and hose connections shall be kept tight to prevent leaks. Leaks shall be tested with soapy water and not flame.

(viii) Cylinders shall be kept away from sparks, flame, or heat.

(ix) Under no circumstances shall smoking be permitted in the vicinity of gas cylinders, whether burning/welding operations are in progress or not.

(x) Acetylene hoses shall be tested frequently for leaks. If acetylene has been escaping in confined areas, the areas shall be properly ventilated and cleared of all gas before welding or burning operations are resumed. Acetylene hose in the path of traffic shall be protected from damage by use of cross-overs to protect the hose from damage.

(xi) No acetylene torch shall be left unattended while burning, and when it is not being used the hose shall be coiled or looped in a work-man-like manner and placed on a bracket at the cylinders, and the pressure in the hose relieved by closing off the valves on the cylinders and opening the valves on the torch. Lines left unattended during meal times or other extended periods shall be either removed from compartments or disconnected at the cylinders.

(xii) Oxygen cylinders shall be kept free from oil and grease at all times because oxygen under pressure brought into contact with oil or oily substances oxidizes so rapidly that an explosion may occur.

- (xiii) Oxygen shall not be used to blow out oil pipes, or for paint spraying, or for pneumatic tools, as an explosion might occur.
- (xiv) Manifolding or the coupling together of cylinders when necessary to obtain greater amounts of acetylene and oxygen shall be done in conformity with the rules and regulations of the U.S. Navy Bureau of Ships Manual, Chapter 92, entitled “Welding and Allied Process,” or the regulations of the National Board of Underwriters.
- (xv) Compressed gas cylinders shall not be refilled on any wharf.

*So in original; probably should be “path.”

**So in original; see the commission comment to this section.

(c) Violation of any of the regulations contained in this section shall necessitate the revocation of the permit, in addition to any other penalties provided by law.

(d) Notification of other agencies: When the U.S. Coast Guard has issued a permit to do hot work, the appropriate federal and local agencies shall be notified of such action. When hot work is being done in Commonwealth harbors this notification shall include a notification to the U.S. Coast Guard and the Port Superintendent.

(e)(1)(i) Prior to bunkering vessels at any berth under the control of CPA, permission shall have been obtained from the Port Superintendent. Permission will not be granted unless evidence of insurance, in a form satisfactory to the Executive Director, and in an amount deemed by him adequate to cover the costs of cleanup of any spillage and/or other damage, shall have been presented to and accepted by the Executive Director.

(ii) In addition, the U.S. Coast Guard must also be notified and have granted permission for the bunkering operation.

(iii) It is the responsibility of the vessel and its owners and operators to clean up all spillage occurring during the course of, or as a result of bunkering operations, and to pay for all damages and costs arising out of such operations.

(2)(i) During bunkering operations where bunkers are being taken thru an open fuel intake or from a fuel tank truck, where a fire hazard may exist, cargo operations shall cease. This shall not apply when bunkers are taken from a pipeline connecting thru gasketed joints directly to the vessel’s piping system. However, the Port Superintendent may at his discretion discontinue operations when an oil spill occurs (as from a broken hose or ruptured gasket) or any hazardous situation exists.

(ii) No welding, burning, or other types of work that may conceivably provide a hazardous condition shall continue within less than fifty feet of the bunkering site while such bunkering operations are in progress. This time period shall include from when

(A) The tank truck arrives onto the wharf or

(B) When a hose is hooked up to the wharf’s fuel line, or

(C) The vessel’s bunkering connection is opened.

(D) The time shall cease when the tank truck is off the wharf, or the wharf’s and vessel’s fuel connections have been secured.

(iii) The mooring lines of the vessel will be checked prior to the bunkering operation to ensure they are secure and to prevent any surging.

- (iv) Prior to any fuel line hook up being made, or a fuel hose stretched to a vessel, a grounding line will be connected from the vessel to the wharf. This grounding line should be connected first to the vessel and then connected to the shore ground.
- (v) Except when bunkers are taken from a pipeline connecting through gasketed joints directly to the vessel's piping system, all engines, motors, fans, and other devices liable to produce sparks located closer than fifty feet will be stopped. On small craft, such as fishing boats and pleasure boats, all ports, windows, doors and hatches shall be closed.
- (vi) Only flashlights approved by the U.S. Coast Guard or equivalent organization may be used during bunkering operations.
- (vii) Drip pans will be placed under all points where fuel could leak onto either the wharf, decks or into the harbor.
- (viii) On all vessels bunkering at berths controlled by CPA, there shall be no smoking, lighting of matches, lighters or use of other devices producing sparks or flame; or the throwing of switches (other than certified non-sparking types) within fifty feet of the bunkering point that could produce a spark.
- (ix) No unauthorized persons are to be allowed either on board the vessel, or in the immediate vicinity of the bunkering point.
- (x) During bunkering operations when a hose and nozzle are used, the nozzle must be kept in continuous contact with the vessel's fuel intake opening to eliminate the possibility of static sparks.
- (xi) A competent crew member will be stationed by the vessel's fuel intake at all times while the operation is in progress. Such person must have a good command of the English language in order to communicate with the shore personnel. Should there be no one in the crew capable of this, an interpreter must be present during the entire fueling operation.
- (xii) Upon completion of the taking of bunkers, all shore connections must be closed and vessel's filling lines closed prior to disconnection of the grounding lines. Said grounding lines will be disconnected from the shore and then from the vessel.
- (xiii) Any spilled oil or fuel will be wiped up immediately. The vessel should be ventilated thoroughly by the opening of doors, hatches, portholes, etc., to dispel any fumes for at least five minutes before resuming normal operations, or the operating of any spark producing mechanisms. On small craft such as fishing boats and pleasure craft, particular attention should be paid to seeing that there are no accumulated fumes in the bilges, hatches, or other below deck spaces.
- (xiv) On full completion of all bunkering operations, the Port Superintendent must be notified.
- (xv) Any and all other regulations pertaining to bunkering, not specifically mentioned above, such as for example the flying of a red ("Baker") flag, are also in effect, and must be complied with.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The paragraphs of subsection (a), (b)(1) and (b)(3) were not designated. The Commission designated subsections (a)(1) and (a)(2), (b)(1)(i) through (b)(1)(iv), and (b)(3)(i) and (b)(3)(ii). The Commission also designated subsection (e)(2)(ii)(D) for clarity in that subsection.

In subsection (b)(5)(xi), the Commission corrected the spelling of “relieved.”

The double-starred language in subsection (b)(5)(v) probably should be “wheeled.” Compare 14 Com. Reg. at 9274 (May 26, 1992) and 5 Com. Reg. at 2010 (Apr. 29, 1983).

§ 40-20.1-264Dredging and the Removal of Sand, Gravel, Rock, Etc.

(a) It shall be illegal to perform any dredging, or remove any sand, gravel, rock or top soil from any areas under the control of CPA without receiving permission from the Executive Director in writing.

(b) Should other agencies or departments of CNMI or of the federal government be involved, their written authorization must also be obtained.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-20.1-266Structures Prohibited Without Permission

No buildings or structures of any nature whatsoever shall be erected or constructed on CPA property, nor shall existing structures be modified, without obtaining the prior permission of the Executive Director and any other governmental agency as required by law. In general, approval will be dependent on an agreement to return the property to its original state when vacating the property or premises if requested to do so by CPA.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-268Use of Harbor by Small Craft

(a) CPA may allocate berths and moorings for small craft in all areas under its jurisdiction.

- (b)(1) Priorities shall be set up in Commonwealth harbors (commercial port) as follows:
- (i) Commercial fishing boats, or boats hauling commercial fish cargoes;
 - (ii) Charter boats;
 - (iii) Other commercial craft;
 - (iv) Recreational craft.
- (2) Berths will be made available only when not required for large, commercial, ocean-going vessels, or government-owned/operated vessels, or for vessels for which prior long-term commitments have been made.
- (3) Exceptions to the above priorities may be made when the Port Superintendent deems them to be in the best interests of public safety, health and welfare.

(c) Priorities may be set up in other areas under its jurisdiction as CPA deems necessary.

(d)(1) It is unlawful to make fast to, moor, dock, anchor at, or lay alongside any CPA controlled pier, wharf, quay bulkhead, landing, dolphin, mooring or other moored vessel or anchored vessel in areas under the control of CPA without specific authorization of the Port Superintendent, and any offending vessel may be removed without any liability of CPA to its owner.

(2) Any costs incurred in removing such unauthorized vessels shall be for the account of the owner, master, agent, or operator of the offending vessel.

(e) Small craft mooring permit/request: Any interested person, persons, corporation, or other legal body may apply for a mooring permit by completing” in full the application provided by the Port Superintendent. In the case of a legal body, association, or other organized body, such evidence of corporate existence must be submitted as may be decided by the Port Superintendent.

- (f) Issuance of a mooring permit. A mooring permit may be issued when
- (1) Proper application has been submitted,
 - (2) Upon execution of an agreement,
 - (3) When an adequate berthing or mooring facility becomes available,
 - (4) The vessel using the facility is in good material and operating condition and capable of operating beyond the confines of the harbor on a regular basis, and
 - (5) The payment of any required fees.

(g) Applications for mooring permits may be rejected for the following reasons:

- (1) Failure to properly file an application,
- (2) No berth or mooring available,
- (3) At the request of other competent authority.

(h) Cancellation of mooring permits: Mooring permits may be cancelled for any of the following reasons:

- (1) The vessel berthed or moored is being used for illegal purpose,

- (2) The vessel constitutes a hazard to the port authority and/or the vessels in the vicinity,
- (3) The permit has expired,
- (4) The vessel has been abandoned,
- (5) The owner, operator, legal body or entity have been convicted of a major crime,
- (6) Violation of any pertinent laws of the federal government, CNMI, U.S. Coast Guard, or rules and regulations of CPA.

(i) All small recreational craft utilizing the waters of the areas under the jurisdiction of CPA shall be equipped with fire-fighting and lifesaving equipment as required and approved by the U.S. Coast Guard.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-270Port Security

(a) Whenever, in the opinion of the Port Superintendent, the activities of the officers or crew of a vessel in port, or of any persons performing labor in connection with the loading or unloading of a vessel in port, so warrant, the Port Superintendent may engage the services of such security personnel as he deems reasonably necessary to maintain peace and order upon a CPA dock or wharf, and to guard against violations of Commonwealth laws or regulations. Upon so doing, the Port Superintendent shall promptly notify the master or agent of the vessel concerned, or the employer of the laborers concerned. The vessel and its owners and agents, or the employer of such labor, as the case may be, shall be liable to CPA for CPA's actual cost of such additional security personnel, plus 10% of such cost for administrative expenses.

(b) Any person aggrieved by a decision or order of the Port Superintendent made pursuant to this section may appeal such decision or order to the Board of Directors within ten days thereof. The Board shall promptly afford such person notice of, and the opportunity to be heard at a hearing, within 30 days after filing the appeal and the Board of Directors' decision shall be released not more than twenty days after the final hearing.

Modified, 1 CMC § 3806(d), (e).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2549 (Jan. 15, 1984); Amdts Proposed 5 Com. Reg. 2490 (Nov. 15, 1983).

§ 40-20.1-272Cost of Cleanup of Oil Spillage

(a) Every vessel which enters a port of the Commonwealth shall carry a current certificate of financial responsibility (water pollution) issued by the Federal Maritime Commission.

(b) Every vessel, and its master, owners, agents, shall be liable for the cost of cleanup of every spillage of oil or other petroleum products from such vessel into any waters of the Commonwealth.

(c) In the event that, because more than one vessel shall be in the vicinity of an oil spill, it shall not be possible to determine which of such vessels is responsible for such spill, all vessels in the vicinity at or about the time of such spill and which utilize or carry the type of oil or other petroleum product which was spilled, shall be jointly responsible for the cost of cleanup. The cost of cleanup shall be paid to CPA upon demand, and the provisions of § 40-20.1-165 of this subchapter shall apply in the event of nonpayment.

Modified, 1 CMC § 3806(c), (f), (g).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

In subsection (c), the Commission deleted the repeated word “in.”

Part 300 - Fishing and Recreational Activities

§ 40-20.1-301 Where Prohibited

Fishing, casting or setting of nets, or the catching of fish by any other means or methods, shall be prohibited in the following areas under the jurisdiction of CPA:

- (a) All channels and fairways;
- (b) All approaches to berths, wharves, slips, piers, or quays;
- (c) In any place where cargo operations are in progress, such as the commercial piers and wharves, or where dredging is taking place;
- (d) Off any bridges;
- (e) Any other areas that may be prohibited by order of the Executive Director.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The Commission created the section titles in part 300.

§ 40-20.1-305 Recreational Water Sports Prohibited

- (a) Swimming, snorkeling or scuba-diving in areas under the jurisdiction of CPA are prohibited except by special permission of the Port Superintendent.
- (b) Swimming, diving, or entering the water for recreational purposes is prohibited from all commercial or passenger vessels at anchor, and from any vessel or craft while berthed alongside any pier or wharf.
- (c) Water-skiing is prohibited in the following areas:
 - (1) Any fairway;
 - (2) Any channel leading to a pier, wharf or quay,
 - (3) Within the waters adjacent to any wharves or piers in Commonwealth harbors.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: In subsection (c), the Commission changed “area” to “areas” to correct a manifest error.

§ 40-20.1-310 Alcohol Consumption Prohibited

No person shall consume any liquor or other alcoholic beverages in or on any area under the jurisdiction of CPA except in areas specifically set aside for this purpose.

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.1-315 Persons Under the Influence

- (a) Persons in an inebriated condition or under the influence of drugs are prohibited on any wharves, piers, sheds, roads, or open areas under the jurisdiction of CPA.
- (b) The Ports Authority specifically and categorically disclaims any liability for any accident incurred by persons under the influence of alcohol or drugs while in any areas under the jurisdiction of CPA.

(c) Any damage caused to CPA property, or to property not belonging to CPA but located on CPA areas with its permission, shall be replaced, or repaired as per § 40-20.1-120 of this subchapter.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Part 400 - Pilotage

§ 40-20.1-401 Private Tugboat or Pilot Services

CPA offers no tugboat or pilot services. Such services may be available from the private sector, but CPA does not warrant such availability. The terms of any contract for such services are matters between the parties only, except to the extent specifically provided herein.

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: This section was originally the introduction to former part 5, entitled "Pilotage." The Commission designated it § 40-20.1-401 and created the section title. Many of the original sections in this part did not have titles. The Commission created the section titles where necessary.

The 1994 amendments proposed to delete part 400 and replace it in its entirety. A notice of adoption was never published for the 1994 proposed amendments and, therefore, the Commission has not incorporated the proposed changes into this part.

§ 40-20.1-402 Pilots; Boarding

Pilots will normally board inbound vessels and leave outbound vessels well outside the harbor entrance.

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-404 Observance of Regulations Required

Pilots and masters will observe all harbor, quarantine, immigration and other federal regulations.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-406 Pilot Required

All commercial vessels while underway in the territorial waters of the Northern Mariana Islands shall require a pilot duly licensed by federal or Commonwealth laws.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-408 Tugs; Required for Vessels of 300 Gross Tons

A pilot is required, when bringing in or conducting a vessel of 300 gross tons or above to or from a wharf or berth, to use the aid of tug(s) or any safe docking devices.

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-410 Tugs; Vessels Under 300 Gross Tons

(a) Vessels under 300 gross tons are not required to have the aid of tug(s) or a pilot. However, such tug(s) services shall be made available when requested by the master and/or pilot.

(b) For reasons of safety, the Port Superintendent may require any vessel to use the service of a tug or tugs.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-412 Order of Priority for Pilot Services

(a) A pilot will offer his services in the order of priority established by the Port Superintendent unless another vessel is observed approaching a dangerous position, in which case effort will be made to offer to board and assist the latter vessel.

(b) A pilot will aid and assist, by every means in his power, any vessel in distress.

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-414 Specified Wharf or Berth

A pilot bringing a vessel inward, unless required to anchor for quarantine, will bring the vessel to such wharf or berth as the Port Superintendent may direct.

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-416 Clearance for Departure; Complaints

A pilot will not conduct a vessel to sea unless she has been regularly cleared by CNMI Customs and Immigration, the agent, and the Port Superintendent. Any person having a complaint to make against a pilot is requested to make such complaint in writing to the Port Superintendent, who shall immediately investigate the complaint and report thereon to the Executive Director.

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-418 Duties of the Pilot and the Vessel's Master

(a) Upon boarding a vessel in response to the request of the vessel, its owner, operator, charterer, or its agent, for pilotage service, it shall be the duty of the master to acquaint the pilot with the peculiarities or possible defects of his vessel, it shall be the duty of the master thereof to relieve such pilot of the particular duty in which he is engaged and to take such steps as the master may deem necessary to insure the safety of such vessel and prevent damage to port facilities.

(b) No vessel, other than publicly-owned vessels 300 gross tons and above, including tugs with tows, shall enter or leave or otherwise be underway without a pilot aboard, unless such vessel is sailing under enrollment with a pilot duly licensed by federal law on board (for the purpose of this section, tug and tow shall be considered as one vessel).

Modified, 1 CMC § 3806(f).

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

It appears that the 1992 amendments erroneously omitted language from subsection (a). Compare 14 Com. Reg. at 9282 (May 26, 1992) and 5 Com. Reg. at 2020 (Apr. 29, 1983). Originally subsection (a) provided:

5.9 Upon boarding a vessel in response to the request of the vessel, its Owner, Operator, Charterer, or its Agent, for pilotage service, it shall be the duty off the Pilot to pilot such vessel. It shall be the duty of the Master to acquaint the Pilot with the peculiarities or possible defects of his vessel, her machinery, and/or operation. If, in the opinion of the Master, the Pilot is negligent or incompetent at any time while engaged in piloting the vessel, it shall be the duty of the Master thereof to relieve such Pilot of the particular duty in which he is engaged and to take such steps as the Master may deem necessary to insure, the safety of such vessel and prevent damage to port facilities.

Harbor Regulations § 5.9, 5 Com. Reg. at 2020 (Apr. 29, 1983); see also the comment to § 40-20.1-401.

§ 40-20.1-420 Small Craft Operation

Every person operating small craft in a harbor or through channels or entrances leaving or approaching such harbor shall do so at his own risk.

History: Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.1-401.

§ 40-20.1-422 Homeported Vessels

(a) Vessels, including tugs and tows, which are homeported in the Northern Mariana Islands and which operate inter-island within the Marianas chain of islands, are not required to have a pilot, provided that the vessel master or operator

(1) Meets all the requirements of federal and Commonwealth laws to operate such vessel and

(2) Is familiar with the physical characteristics of the harbors of the Commonwealth.

(b) For purposes of this subchapter, a “homeported vessel” is a vessel that operates on a regular schedule between the harbors of the Northern Marianas and Guam, is licensed to do business in the Commonwealth, pays taxes in the Commonwealth, and maintains and office in the Commonwealth.

(c) A vessel master or operator of a homeported vessel who is new to the Commonwealth and is not familiar with its harbors shall undergo the same number of familiarization trips required of a harbor pilot applicant and shall first be certified by the Port Manager before he is permitted to operate a vessel in the harbors of the Commonwealth.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000); Amdts Proposed 16 Com. Reg. 12391 (Sept. 15, 1994); Amdts Adopted 14 Com. Reg. 9526 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9245 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The 2000 amendments added new subsections (b) and (c) and amended subsection (a). The 2000 amendments amended this part to provide for the licensing of harbor pilots by the Commonwealth Ports Authority. Prior to 2000, the Board of Professional Licensing had the responsibility for licensing harbor pilots. See 22 Com. Reg. at 17242 (May 19, 2000); see also NMIAC, title 125, chapter 30.

See also the comment to § 40-20.1-401.

§ 40-20.1-424 Pilot’s License Required

- (a) All vessels which, under this subchapter, require a pilot to guide the vessel within the harbors of the Commonwealth shall be guided, as they enter or leave a harbor, by a pilot duly licensed by the Commonwealth Ports Authority to provide such service.
- (b) The pilot shall guide the movement of a vessel from the outer limit of the harbor entrance or from anchorage to the dock, or from the dock to the outer limit of the harbor entrance or the vessel anchorage site.
- (c) No person may pilot a vessel within a harbor of the Commonwealth unless that person possesses a valid pilot's license issued by the Authority.
- (d) A license shall specify the pilotage district or harbor where the pilot may serve.
- (e) A pilot's license shall be valid for two years from the date of issue, and shall be subject to renewal every two years. A two-year license fee shall be paid by the licensee upon issuance and for each renewal, as follows: for Saipan, \$600; for Rota, \$300; for Tinian, \$300. The fee may be paid in full or in two installments; one-half upon issuance or renewal, and one-half within one-year later.

Modified, 1 CMC § 3806(d), (e).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-426 Qualification for Harbor Pilot's License

In order to serve as a harbor pilot, a person must file with the Authority a harbor pilot application on a form furnished by the Authority, and shall meet the following qualifications:

- (a) An applicant must be at least 21 years of age;
- (b) Must be either a U.S. citizen, or a lawful permanent resident of the United States, or a citizen of one of the Freely Associated States of Micronesia;
- (c) Must be physically capable of performing the duties of a pilot, as determined by a duly-licensed physician;
- (d) Must be mentally fit and competent to serve as a harbor pilot;
- (e) Must have normal vision, or vision that is correctable to 20/20, for both eyes, as certified by a licensed optometrist;
- (f) Must successfully pass all U.S. Coast Guard examination and requirements required to pilot a vessel;

(g) Must successfully complete the required number of harbor familiarization trips required by the Authority, and provide proof thereof;

(h) Must satisfy at least one of the following:

(1) Holds a valid U.S.C.G. First Class Pilot License for vessels of unlimited tonnage and endorsed for one, or more of the pilotage districts of the CNMI and must document, to the satisfaction of the Board, at least 30 safe vessel movements, within the preceding year (25% of movements must be at night), in any port of the United States, or former Trust Territory of the Pacific Islands, as a harbor pilot working under the authority of his U.S.C.G. First Class Pilot License; or

(2) Possesses a U.S. Coast Guard Master or First Mate's License of unlimited tonnage on steam or motor vessels upon oceans (excluding fishing vessels); or

(3) Possesses a U.S. Coast Guard Master or First Mate's license of not less than 1600 gross ton on steam or motor vessels upon oceans (excluding fishing vessels); or

(4) Possesses a valid U.S. Coast Guard License with a rating as master on steam or motor vessel of 500 gross tons including freight or towing vessels (excluding fishing vessels); and, two-thirds of the required number of vessels movement for that pilotage district have been on vessels of 500 gross tons or more; or

(5) Previously held a Trust Territory deck officer's license for vessels over 500 gross tons and can demonstrate to the satisfaction of the Authority one-year sea time as master or mate of steam or motor vessel of 500 gross tons or more; or

(6) Previously held a CNMI harbor pilot's license for vessels of at least 500 gross tons for the ports in the CNMI and can document to the satisfaction of the Board, at least an average of 10 vessel movements per year in the immediately preceding 5 years in the applicable pilotage district.

(i) Must speak, write and comprehend the English language to the satisfaction of the Authority; and

(j) Pays a non-refundable application fee of \$100.00, at the time the application is submitted.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-428U.S. Coast Guard Examination

(a) Each harbor pilot applicant shall take and pass, or provide satisfactory evidence that the applicant has passed, the U.S. Coast Guard written examination and is licensed, holds or possesses any of the licenses set forth in § 40-20.1-426(h)(2) to (h)(4) inclusive, is familiar with the International Rules of the Road, and possesses a working knowledge of the physical characteristics of the harbor for which the applicant seeks a pilot license for.

(b) Applicants applying for a harbor pilot license under § 40-20.1-526(h)(5) and (6) shall obtain a U.S.C.G. First Class Pilot license for the harbor in which applicant seeks a license.

(c) Applicants who are applying for a harbor pilot license pursuant to § 40-20.1-426(h)(1) are exempted from the U.S.C.G. examination requirement.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-430 Examination Results to Authority

Any person who is applying for a harbor pilot license and who needs to take the U.S. Coast Guard written examination shall make arrangements directly with the U.S. Coast Guard regarding the date, time, and location to take the examination and shall request the U.S. Coast Guard to send the results of the exam directly to the Authority. The Authority shall accept the passing criteria established by the U.S. Coast Guard and the results of the examination.

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-432 Familiarization Trips

(a) All applicants applying for a harbor pilot license must undergo the following minimum number of familiarization trips for a harbor pilot district:

- (1) For the Port of Saipan, at least 12 trips;
- (2) For West Harbor Rota, at least 6 trips; and
- (3) For San Jose Harbor, Tinian, at least 6 trips.

(b) One familiarization trip shall consist of one vessel movement in the harbor included in the pilotage district without any accident, collision or similar incident.

(c) At least half of the required familiarization trips shall be conducted between one hour after sunset and one hour before sunrise.

(d) All of the required familiarization trips shall be on self propelled vessels of at least 300 gross tons or larger, with operational radar.

(e) All familiarization trips by an applicant must be made under the supervision of a licensed harbor pilot for the pilotage district.

(f) All familiarization trips shall be documented and signed by the licensed harbor pilot supervising the trips on a form provided by the Authority.

(g) After completion of the required number of familiarization trips, the Authority shall evaluate the applicant's performance in ship handling skills on the basis of the evaluation forms and other relevant information and decide whether the applicant should be licensed or whether additional familiarization trips should be required. The Authority may require that a pilot applicant perform additional familiarization trips if the supervisory pilot's evaluations indicate that the applicant needs additional experience in ship handling.

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

Commission Comment: In subsection (a), the Commission changed "trip" to "trips" to correct a manifest error.

§ 40-20.1-434 Physical Examination

(a) The following applicants and pilots must have a physical examination by a CNMI licensed physician as follows:

- (1) For all applicants within 30-days of application; and
- (2) For all licensed pilots on an annual basis, or as determined by the Port Manager.

(b) The physical examination required of all applicants or pilots shall demonstrate that a person is in all respect physically fit to perform the duties of a pilot. The examination shall assure that the person's abilities as a pilot are not impaired by eyesight, hearing or other bodily function and shall include examination of the pilot's eyes (including tests for color blindness, depth perception, night vision, disease, field of vision and reflexes); ears; heart; blood pressure; blood components; pulse; speech capabilities; history of diseases (including diabetes, cancer, arthritis, arrhythmia, asthma, bronchitis, emphysema, ulcers, alcoholism and other illnesses) and any other medical information which the physician feels is relevant. The Authority reserves the right to impose unannounced mandatory testing for drug or alcohol use.

(c) The applicant or the pilot shall file with the Authority on a form supplied by the Authority the examining physician's statement of fitness:

- (1) Within 60 days of the applicant filing the completed application form with the Authority;
- (2) Within 60 days of the date of a pilot's annual physical examination or physical examination for renewal.

(d) If the physician's statement of fitness indicates that the applicant is not physically or mentally fit to perform the duties of a pilot, the Authority shall not issue or renew a license.

(e) In the case of the annual physical exam, should the physician's statement of fitness indicate that the pilot is not capable of performing the duties of a pilot, the Authority shall temporarily suspend such license until a further physical examination has been completed and indicates that the pilot is capable of performing his duties as a pilot.

(f) In the case of the renewal of a pilot's license, should the pilot be temporarily physically incapacitated at the time his license is due to be renewed, the Authority shall not renew such license until a further physical examination indicates that the pilot is capable of performing his duties as pilot.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-436 License Renewal

(a) Each pilot shall renew his or her pilot's license every two years upon the anniversary date of issue. All licensed pilots seeking to renew their license shall complete the application form provided by the Authority and file it at least sixty days prior to the expiration date of the license. Upon approval of the license renewal application the renewal fee shall be paid to the Authority as provided for in § 40-20.1-424(e) above.

(b) In addition to filing the application to renew one's pilot license, the applicant must also meet the following renewal requirements:

(1) Have completed the following vessel movements on self propelled vessels of 300 gross tons or more in the applicable pilotage district during the time he was licensed (half of the trips shall be conducted after sunset). At least half of the trips shall have been completed during the immediately preceding 12 months from the date the application for renewal is filed with the Authority:

- | | | | |
|-------|-------------------------|---|---|
| (i) | Port of Saipan | - | 6 |
| (ii) | San Jose Harbor, Tinian | - | 3 |
| (iii) | West Harbor, Rota | - | 3 |

(2) Pass a general physical examination within sixty days prior to the renewal date. The physician shall submit to the Authority a statement of fitness stating whether and under what conditions the pilot is capable of providing pilotage services.

(c) If an applicant for renewal fails to meet the required number of trips in the pilotage district, the Authority shall require the applicant to complete additional familiarization trips under the supervision of a licensed pilot prior to renewing the pilot's license. During such time if the time for the pilot's license renewal has already passed, such pilot shall not pilot a vessel without the supervision of a licensed pilot.

(d) A pilot who fails to renew his or her license and fails to complete the requirements contained in subsection (b) above before the license expiration date, shall

be assessed the renewal fee and a \$50.00 monthly delinquent fee for each month the license is not renewed.

(e) A pilot whose license has expired for over 60-days must file a new application and receive approval from the Authority for reinstatement.

Modified, 1 CMC § 3806(c), (d), (e).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

Commission Comment: The original paragraphs of subsection (b)(1) were not designated. The Commission designated subsections (b)(1)(i) through (b)(1)(iii).

The cross-reference in subsection (d) was originally to “Part 5.19(b) above.” See 22 Com. Reg. at 17843 (Sept. 20, 2000). This was not correct as original part 5.19 is the next section (now § 40-20.1-438). It appears that the intended reference was to part 5.18(b), and the Commission corrected the cross-reference accordingly.

§ 40-20.1-438 Accident Reports Required

(a) In every case where a vessel piloted by a CPA-licensed harbor pilot collides with another vessel, collides with a dock, meets any casualty, or is injured or damaged in any way, the pilot shall file a written report with the Authority immediately upon returning to shore but in no event not later than 24-hours after the incident. The report shall apprise the Authority of all relevant facts relating to the incident.

(b) Any pilot who shall fail, neglect, or refuse to make a written report to the Authority within the time period the report is required to be filed, shall have his license suspended or revoked as the Authority may determine.

(c) The Authority may temporarily suspend the license of a harbor pilot, after an accident, collision or other mishap, if it appears that the same was caused by the pilot’s negligent or intentional act or omission.

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-440 Revocation of Pilot’s License

(a) Pursuant to applicable CNMI law, including but not limited to the CNMI Administrative Procedure Act [1 CMC §§ 9101, et seq.], the Authority shall have the power, on its own motion, at its discretion, or upon the written request of any interested party, to investigate the performance of a pilot subject to this subchapter and issue a reprimand, or suspend, withhold, or revoke the license of any pilot, for misconduct, incompetence, inattention to duty, intoxication, drug use, or failure to perform his or her

duties under this subchapter, or for violation of any of the rules or regulations or order of the Authority for the government of pilots, including training requirements, or for misrepresentation in the application process. The Authority may require that a pilot satisfactorily complete a specific course of training or treatment prior to reinstatement of one's pilot's license.

(b) The Authority shall have the right to suspend or revoke the license of any pilot convicted of a felony offense in any U.S. jurisdiction, a crime related to the harbor pilot profession, or for a crime involving the use of illegal drugs or alcohol, or the use of alcohol or drugs while on duty, including missing an assignment due to alcohol or illegal drug use.

(c) The Authority shall have the right to suspend or revoke the license of any pilot who files false information or a fraudulent report with the Authority.

(d) Any pilot whose license has been revoked must reapply with the Authority to obtain a new license.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-442 Unlimited Radar Observation Training Course

(a) All harbor pilots must complete a Coast Guard approved, unlimited radar observation training course prior to issuance of a pilot license. If a pilot, licensed under the authority of this subchapter, conducts the movement of a vessel required to have a pilot under regulations promulgated by the Commonwealth Ports Authority but does not hold a valid active unlimited radar observation training course certificate of completion, that pilot's license is subject to revocation/suspension proceedings under the authority of this subchapter.

(b) The Authority shall not renew a pilot's license if the applicant's unlimited radar observation certificate has expired.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-444 Pilotage in Violation of these Regulations

All persons who pilot a vessel in violation of this subchapter shall be subject to criminal or civil penalties as provided by law, as well as suspension or revocation of one's pilot license.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-446 Drug Screening Tests

The Authority reserves the right to require satisfactory completion of a drug-screening test by an applicant prior to issuance or renewal of a license. The Authority also reserves the right to conduct random drug testing/ screening for all persons holding a harbor pilot license issued by the Authority.

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

§ 40-20.1-448 Validity of Licenses Issued by Board of Professional Licensing

All harbor pilot licenses duly issued by the CNMI Board of Professional Licensing prior to the enactment of Public Law 11-99 shall continue being effective until they expire; provided that all harbor pilots duly licensed by the CNMI Board of Professional Licensing shall hereafter be under the jurisdiction of the Commonwealth Ports Authority and shall be governed by this subchapter and applicable federal and Commonwealth law, including any lawful order issued by the Port Manager or Harbor Master, or the Executive Director of the Commonwealth Ports Authority.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

Commission Comment: PL 11-99 (effective Sept. 21, 1999), the “Board of Professional Licensing Amendments Acts of 1998,” is codified at 4 CMC §§ 3101, et seq.

The 2000 amendments provided for the licensing of harbor pilots by the Commonwealth Ports Authority. See part 400 of this subchapter. Prior to 2000, the Board of Professional Licensing had the responsibility for licensing harbor pilots. See NMIAC, title 125, chapter 30, for the history of the Board of Professional Licensing’s regulations.

§ 40-20.1-450 Construction of Harbor Superintendent

Whenever in the rules and regulations in this subchapter reference is made to the “Harbor Superintendent” that term shall be construed to mean the Port Manager of the seaport in question.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 22 Com. Reg. 17470 (Sept. 20, 2000); Amdts Proposed 22 Com. Reg. 17236 (May 19, 2000).

CHAPTER 40-20 SEAPORT DIVISION

SUBCHAPTER 40-20.2 TERMINAL TARIFF RULES AND REGULATIONS

SUBCHAPTER 40-20.2 TERMINAL TARIFF RULES AND REGULATIONS

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- § 40-20.2-601 Space Rentals and Leases

Subchapter Authority: 2 CMC § 2122(j).

Subchapter History: Amdts Adopted 31 CR 29768 (August 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29511 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 28, 2009); Amdts Adopted 28 Com. Reg. 25913 (June 19, 2006) (technical correction); Amdts Adopted 28 Com. Reg. 25620 (Apr. 17, 2006); Amdts Proposed 28 Com. Reg. 25550 (Jan. 30, 2006); Amdts Adopted 24 Com. Reg. 19009 (Jan. 29, 2002); Amdts Emergency and Proposed 23 Com. Reg. 18421 (Oct. 19, 2001) (effective for 120 days from October 9, 2001); Amdts Adopted 23 Com. Reg. 17838 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17609 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 17001 (Dec. 15, 1999); Amdts Proposed 21 Com. Reg. 16831 (July 23, 1999); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Amdts Adopted 8 Com. Reg. 4392 (Jun. 3, 1986); Amdts Proposed 8 Com. Reg. 4328 (Apr. 18, 1986); Amdts Proposed 8 Com. Reg. 4167 (Jan. 17, 1986);* Amdts Adopted 7 Com. Reg. 3971 (Sept. 16, 1985); Amdts Proposed 7 Com. Reg. 3950 (Aug. 15, 1985); Amdts Adopted 7 Com. Reg. 3368 (Jan. 15, 1985); Amdts Proposed 6 Com. Reg. 3182 (Oct. 15, 1984); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984); Amdts Adopted 6 Com. Reg. 2549 (Jan. 15, 1984); Amdts Proposed 5 Com. Reg. 2490 (Nov. 15, 1983); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

*A notice of adoption for the January 1986 proposed amendments was never published

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general Commission comment to subchapter 40-10.1.

PL 2-48, the “Commonwealth Ports Authority Act,” codified as amended at 2 CMC §§ 2101-2190, took effect October 8, 1981. It was based on the “Mariana Islands Airport Authority Act” enacted by the Congress of Micronesia as PL 6-58. See the commission comment to 2 CMC § 2101. PL 2-48 created the Commonwealth Ports Authority to implement its provisions and operate the ports of the Commonwealth. See 2 CMC §§ 2121-22.

Executive Order 94-3 (effective August 23, 1994), reprinted in the commission comment to 1 CMC § 2001, reorganized the Commonwealth government executive branch, changed agency names and official titles and effected numerous other revisions. Executive Order 94-3 § 304(a) allocated the Commonwealth Ports Authority to the Department of Public Works for purposes of administration and coordination. PL 11-109 (effective December 21, 1999) vacated section 304(a) in its entirety and reenacted and reinstated all provisions of 2 CMC, division 2, chapter 1, 2 CMC §§ 2101-2190, in effect immediately prior to the effective date of Executive Order 94-3. PL 11-109 §§ 2(b) and 4.

The Commonwealth Ports Authority Act contains special provisions related to rules and regulations. See 2 CMC §§ 2141-2146.

Part 001 - General Provisions

§ 40-20.2-001 Definitions

As used herein, the term “the port” means any and every commercial port or harbor in the Commonwealth of the Northern Mariana Islands, and all those geographical areas in the territorial waters of the Commonwealth over which CPA exercises the various powers conferred upon it by law; the term “CPA” means the Commonwealth Ports Authority, established by PL 2-48 [2 CMC §§ 2101-2190]; and the term “Executive Director” means the Executive Director of the Commonwealth Ports Authority or his designee.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The 1992 Terminal Tariff Rules and Regulations readopted and republished all of the then existing Terminal Tariff Rules and Regulations. The Commission, therefore, cites the 1992 regulations in the history sections throughout this subchapter.

The notice of adoption for the 1983 Terminal Tariff Rules and Regulations changed the proposed language of this section. See 5 Com. Reg. at 2482 (Oct. 20, 1983).

Sections 40-20.2-001 and 40-20.2-005 were originally sections (A) and (B) of former part I, entitled “General Rules and Regulations.” See 5 Com. Reg. at 1974 (Apr. 29, 1983); 14 Com. Reg. at 9234 (May 26, 1992). The Commission created part 001 and separated these sections from the rest of former part I (now part 100) of this subchapter.

§ 40-20.2-005 Applicability

The tariff set forth in this subchapter, and the rates, charges, rules and regulations herein, apply to all traffic at the port, without specific notice, quotation to (except as hereinafter may be specified), or arrangements with shippers or carriers.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-010 Terms and Definitions

(a) Bunkering. The loading of fuel into a vessel's bunker for its own use. The meaning of the term usually pertains to the conveyance of the fuel over the ship's sides.

(b) Cargo. Goods, wares, materials, merchandise or any other object of commerce brought into the port docks by transportation.

(c) Containers.

(1) Shall mean rigid, re-usable, dry cargo, insulated, refrigerated, flat rack, liquid tank or open top cargo containers capable of being readily mounted onto or dismounted from wheels, chassis or flat bed trailer.

(2) The container shall be 8 feet wide, 20 feet, 24 feet, 27 feet, 35 feet, 40 feet, or 45 feet long and 4 feet to 13 feet high. Except for dimensions, which are given above, it shall be constructed in conformity with the specifications for freight containers adopted by the International Organization for Standardization (ISO) and the American Organization for Standardization (ASO). The container will have top and bottom corner castings conforming to ISO/ASO specifications.

(d) Dock. Any bulkhead structure, pier, or quay landing to which a vessel may make fast for discharging or loading cargo or passengers for any reason.

(e) Dockage. The charge assessed against a vessel for berthing at a wharf, pier, or any structure owned or utilized by CPA or for mooring to a vessel so berthed.

(f) Metered ton shall mean two hundred forty U.S. gallons.

(g) Revenue Ton. As used in this tariff will be either measurement ton or weight ton as used in the vessel's manifest to assess the carrier's freight charges, based on the following as appropriate:

(1) MBM (thousand board measurement) — 1,000 board feet.

(2) Long ton — Two thousand two hundred forty pounds.

(3) Measurement ton — A ton of forty cubic feet.

(4) Metered ton — Two hundred forty gallons.

(5) Metric ton — Two thousand two hundred four and six tenths pounds weight or 35.314 cubic feet.

(6) Short ton — Two thousand pounds weight.

When the basis of the freight charge is not shown on the manifest, port charges shall be assessed on the basis of weight or measurement, whichever will yield the greater revenue.

(h) Vessels shall mean steamboats, motorboats, sailing vessels, motor vessels, barges, liners, pleasure crafts or any structure(s) made to float on the water for navigation.

(i) Wharfage. A charge assessed against all cargo passing or conveyed over, onto or under any dock or wharf when such cargo is to be discharged or loaded on a vessel berthed at a piling, wharf, bulkhead, pier or when moored in any slip, channel, basin, or canal or made fast to another vessel which is made fast to a wharf or dock or moored in

any slip, channel, basin or canal. Unless otherwise provided, wharfage shall be considered earned and will be assessed whether or not cargo received on the dock or dock premises is eventually loaded on any vessel. Payment of wharfage shall be guaranteed by the vessel, her owners, charterers, and agents, and use of such wharf or dock shall be deemed an acceptance and acknowledgment of this guarantee.

Modified, 1 CMC § 3806(e), (f), (g).

History: Amdts Adopted 28 Com. Reg. 25620 (Apr. 17, 2006); Amdts Proposed 28 Com. Reg. 25550 (Jan. 30, 2006); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: Section 40-20.2-010 was originally part II of the Terminal Tariff Rules and Regulations, entitled “Terms and Definitions.” See 5 Com. Reg. at 1975-76 (Apr. 29, 1983); 14 Com. Reg. at 9235-36 (May 26, 1992). The Commission created part 001 and moved former part II to § 40-20.2-010.

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

In subsection (c), the Commission changed “35 fee” to “35 feet” to correct a manifest error.

The April 2006 amendments added subparts (1)-(6) to subsection (g) and amended subsection (i).

In subsection (f), the Commission created one sentence by removing the period after ton and changing the capital “S” in “shall”.

In subsection (h), the Commission created one sentence by removing the period after vessels and changing the capital “S” in “shall” and made “craft” plural.

In subsection (g), the Commission deleted the quotation marks surrounding the entire subsection and added apostrophes to “vessels” and “carriers” to correct manifest errors.

In subsection (i), the Commission deleted the quotation marks surrounding the entire subsection.

Part 100 - General Rules and Regulations

§ 40-20.2-101 Tariff Effective

The rates, charges, rules and regulations, additions, revisions, or supplements named in the tariff set forth in this subchapter, apply on all freight received at the terminal or

wharves of the port on and after the effective date of this tariff, or effective dates of additions, revisions of supplements thereto.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: See the comment to § 40-20.2-001.

§ 40-20.2-105 Application of Tariff

Use of the terminal facilities or wharves of the port, or entering upon or within the territorial waters of the Commonwealth for the purpose of refueling or bunkering, shall be deemed as acceptance of this tariff and the terms and conditions stated herein.

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The notice of adoption for the 1983 Terminal Tariff Rules and Regulations changed the proposed language of this section. See 5 Com. Reg. at 2482 (Oct. 20, 1983).

§ 40-20.2-110 Responsibility for Wharfage

The Commonwealth Ports Authority will be responsible for the collection of all charges in connection with the wharfage of all inbound and outbound cargo and all other charges levied by this subchapter. No cargo will be received or issued until it is properly pre-checked and accounted for in accordance with the procedures of accountability of CPA.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-115 Minimum Billing Charge

No single invoice shall be issued by CPA for any charge provided in this tariff, for less than ten dollars. Such minimum billing charge shall take precedence over any other provision in this tariff.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-120 Payment of Charges

All charges for services shall become due and payable upon presentation of invoice for such services. Any unpaid invoice thirty days after receipt of same shall accrue interest at the rate of one percent per month.

Modified, 1 CMC § 3806(e).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-125 Availability of Stevedoring and Handling Personnel

Stevedoring and handling service is not provided by CPA. It is provided, subject to availability of personnel and equipment, by a private concern or concerns authorized to do business at the port.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-130 Interpretation of Tariff

The provisions of the tariff in this subchapter and its application shall be interpreted and enforced by the Executive Director.

Modified, 1 CMC § 3806(d).

History: Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Part 200 - Wharfage

On January 27, 2009, the Commonwealth Ports Authority published emergency rules and regulations increasing the terminal tariff. 31 CR 29163 (Jan. 2009).

§ 40-20.2-201 Wharfage Rates

(a) Wharfage Rates. Wharfage rates shall be charged on the basis of a revenue ton.

(1) Wharfage for all cargo other than liquid petroleum products off-loaded or on-loaded by pipeline shall be \$11.40 per revenue ton.

(2) Wharfage for liquid petroleum products, which includes gasoline, diesel, bunkers and other liquid petroleum products off-loaded or on-loaded by pipeline, shall be \$8.55 per revenue ton.

Modified, 1 CMC § 3806(a).

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 28 Com. Reg. 25913 (June 19, 2006) (technical correction); Amdts Adopted 28 Com. Reg. 25620 (Apr. 17, 2006); Amdts Proposed 28 Com. Reg. 25550 (Jan. 30, 2006); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: On May 20, 2009, the Commonwealth Ports Authority repealed and reenacted Parts 200 through 600. 31 CR 29547 (May 20, 2009). The Commission designated subsection (a) and its subparts (a)(1) and (a)(2). The amendment removed subsection (b).

§ 40-20.2-205 Limitations

Provided the ocean bill-of-lading reads transshipment, and the cargo does not leave the control of the inward or outward carriers at the port while awaiting transshipment, and the second carrier's bill-of-lading provided by the agent involved indicates the first carrier's vessel's name, voyage number, and other pertinent information, and

- (a) If the final destination of the cargo is a port outside the Commonwealth, the wharfage rates specified in § 40-20.2-201 shall not apply. Instead, the wharfage rates for such cargo will be \$2.38 per revenue ton. The minimum charge per bill-of-lading will be \$2.38; or
- (b) If the final destination of the cargo is a port within the Commonwealth, the wharfage rates specified in § 40-20.2-201 shall apply provided that cargo upon which wharfage charges have been paid at the port of transshipment shall not be subject to a wharfage charge at the port of final destination. Alternatively, the Executive Director may provide for the collection of wharfage charges at the port of final destination.

Modified, 1 CMC § 3806(c).

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Amdts Proposed 8 Com. Reg. 4167 (Jan. 17, 1986); Amdts Adopted 7 Com. Reg. 3971 (Sept. 16, 1985); Amdts Proposed 7 Com. Reg. 3950 (Aug. 15, 1985); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-210 Containerized Tuna

All wharfage charges applicable to outbound containerized tuna cargo are for the account of the cargo, to be collected by the outbound carrier or the cargo owner's agent.

§ 40-20.2-215 Item Excluded

Wharfage will not be charged on:

- (a) Authorized carrier or consignees' equipment taken on a wharf to move merchandise (but not for shipment).
- (b) Baggage when accompanying travelers, not including automobiles.
- (c) Cargo which a vessel discharges and reloads prior to departure, in order to load or discharge other cargo (overstowed cargo).
- (d) Empty vans.
- (e) Empty containers.
- (f) Ship's stores, and/or repair materials and supplies, or dunnage lumber for use in ordinary stowage of freight, when all are intended for vessel's use, consumption or repairs.
- (g) Fish transferred from the catch vessel to a mother ship.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Part 300 - Port Entry Fee

§ 40-20.2-301 Port Entry Fee

All vessels (except military and government-owned vessels) shall pay a Port Entry Fee as indicated in the schedule below when entering a CNMI port, or refueling within the territorial waters of the Commonwealth of the Northern Mariana Islands.

Port Entry Fees

- (a) For vessels of 1,000 registered gross tons or less \$220.40
- (b) For vessels between 1,001 and 2,000 registered gross tons \$438.90
- (c) For vessels over 2,000 registered gross tons \$438.90

(plus an additional charge of \$220.40 for each 2,000 registered gross tons or fraction thereof in excess of 2,000 registered gross tons)

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-305 Increases of Port Entry Fees

[repealed]

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999).

Part 400 - Dockage

§ 40-20.2-401 Basis for Establishing the Vessel's Length

Dockage charges shall be based upon the vessel's length overall as published in "American Bureau of Shipping" or "Lloyd's Register of Ships" or any other recognized classification society. Length overall shall mean the linear distance, expressed in feet, from the most forward point of the stem of the vessel, measured parallel to the base line of the vessel. If the length overall of the vessel does not appear in "American Bureau of Shipping," "Lloyd's Register of Ships," or any other recognized society, the port may obtain the length overall from the vessel's register, or may measure the vessel. The following will govern the disposition of fractions: five inches or less disregard, over five inches, increase to the next whole figure.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-405 Dockage Period; How Calculated

The period of time upon which dockage will be assessed shall commence when vessel is made fast to a wharf or dock; or when a vessel is made fast to a vessel so berthed; or when a vessel comes within, or moors within a slip; and shall continue until such vessel is completely free from and has vacated such berth or slip. No deduction will be allowed for Saturdays, Sundays, holidays or because of weather or other conditions.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-410 Charges for Vessel Shifting

When a vessel is shifted directly from one wharf or anchorage (berth) to another wharf or anchorage (berth) operated or utilized by the port, the total time at such berths will be considered together in computing the dockage charge.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-415 Dockage Rates

Overall Length of Vessel in Feet

Over	But not over	Charge per 24-hour or fraction thereof
0	100	\$199.50
100	150	\$252.70
150	200	\$307.80
200	300	\$528.20
300	350	\$798.00
350	400	\$967.10
400	450	\$1,130.50
450	500	\$1,297.70
500	550	\$1,463.00
550 and Over	---	\$2,065.30

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-420 Abuse of Docking Privileges; Fishing Vessels

The Commonwealth Ports Authority declares that the commercial docks and wharves of the Commonwealth are intended for ~~use for the purpose of~~ active loading and unloading of vessels. It is therefore the policy of the Authority to discourage inefficient use of the limited space at the commercial docks and wharves of the Commonwealth, by providing a surcharge for vessels moored or docked there at which are not actively engaged in loading or unloading. The Authority further finds that the principal sources of abuse of dock privileges are fishing vessels.

(a) Catch vessels, including but not limited to purse seiners, pole and line vessels, and small fish carriers, may remain in port while waiting to unload their cargo, while actively unloading their cargo, and for a period of three days thereafter for the purpose of re-provisioning, without the payment of a surcharge. Any catch vessel which remains at a commercial dock or wharf of the Commonwealth for a period of time in excess of that permitted by this subsection, without an exemption of surcharges by the Port Superintendent, shall pay a surcharge of \$300 per 24-hour day or fraction thereof for each excess day that it remains in port, in addition to the dockage charges provided hereinabove. If such a vessel remains in port for longer than three continuous days, it shall provide reasons satisfactory to the Port Superintendent as to why a surcharge should not be levied under this subsection. In the event that the Port Superintendent does not accept such reasons and does not exempt the vessel from payment of the surcharge, the vessel and its owner shall be liable for the surcharge, and shall promptly pay the same.

(b) Motherships, including but not limited to refrigerated cargo vessels carrying or intending to carry fish, shall, promptly upon their arrival in port, advise the Port Superintendent of their proposed plan for loading and transshipment of cargo. The Port Superintendent may reject a plan if he determines that it is not reasonable. The Port Superintendent shall approve the plan if he determines that the plan is calculated to accomplish the business of the vessel within a reasonable time. A mother ship may not remain at a commercial dock or wharf of the Commonwealth for a period of time in excess of ten days, unless such a plan has been approved by the Port Superintendent. If the Port Superintendent determines that the vessel is not endeavoring in good faith to comply with such plan, the Port Superintendent may in his discretion either

- (1) Require the vessel to leave port, or
- (2) Require the vessel to pay a surcharge of \$300.00 per day for each day that the vessel remains in port without an approved plan.

(c) For the purpose of this section, a dockage period shall not be construed as ending unless and until a vessel shall have vacated its berth or slip for a period of not less than 24 consecutive hours.

(d) Any person aggrieved by a decision or order of the Port Superintendent made pursuant to this section may appeal such decision or order to the Board of Directors, within ten days thereof. The Board shall promptly afford such person notice of and the opportunity to be heard at a hearing within 30 days after filing the appeal and the Board of Directors' decision shall be released not more than twenty days after the final hearing.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2549 (Jan. 15, 1984); Amdts Proposed 5 Com. Reg. 2490 (Nov. 15, 1983).

Commission Comment: On May 20, 2009, the Commonwealth Ports Authority promulgated emergency regulations and published proposed regulations amending parts 200-600 of the Terminal Tariff Rules and Regulations. 31 CR 29547 (May 20, 2009); 31 CR 29163 (Jan. 2009). Emergency regulations are effective for 120 days. 1 CMC § 9104(b). On August 27, 2009, a notice of adoption amending and adopting the proposed regulations promulgated by CPA was published. 31 CR 29768 (Aug. 27, 2009). The amendments replaced "Dockage Rate Increases" with "Abuse of Docking Privileges; Fishing Vessels." The Commission inserted "a" before "surcharge" and changed "source" to "sources" in the introductory provision to § 40-20.2-425. The Commission inserted an apostrophe in "Directors" in § 40-20.2-425(d) to indicate possession.

Part 500 - Miscellaneous Charges

On January 27, 2009, the Commonwealth Ports Authority published emergency rules and regulations increasing the terminal tariff. 31 CR 29163 (Jan. 2009).

§ 40-20.2-501 Fresh Water

(a) Fresh water, if available, will be furnished to vessels at a rate of thirty cents per metered ton or fraction of a ton.

(b) In addition a charge of \$35 will be levied to connect and disconnect hoses and couplings except on Saturdays, Sundays and holidays. On Saturdays, Sundays and holidays, a charge of \$80 will be levied for this service.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-505 Electric Service Charges

At the request of a carrier, or its agent, electric power shall be supplied to vessels at the same rates that the government of the Northern Mariana Islands would charge for the service if supplied directly, plus the following service charges:

(a) For connecting light or power circuits to vessel when shore cables, plugs or motor connections are supplied by the vessel, the service charge shall be \$8. If the vessel temporarily leaves the terminal and returns during the same voyage, an additional charge will be made for again connecting the light or power circuits as herein provided.

(b) For connecting light or power circuits to vessel when shore cables, plugs or motor connections are supplied by the port, or for the extension of light or power circuits, the service charge shall be \$11 plus time at the established man-hour rates.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-510 Bunker Fee

A charge of \$0.86 per barrel for residual oil, and \$1.43 per barrel for diesel oil, will be assessed all suppliers of oil for bunkering at the port.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-515 Home Port Fee; Saipan and Tinian

Rates and fees for vessels operating in the territorial waters of the Commonwealth on a continuing and long-term basis may be established by agreement, exclusive of this Terminal Tariff, pursuant to the powers conferred upon CPA by law. In the absence of such an agreement, all of the rates and fees set forth in this Terminal Tariff and elsewhere in the Harbor Regulations [NMIAC, title 40, subchapter 20.1] shall apply, except that the dockage rates shall be as follows:

At the commercial ports of Saipan and Tinian:

Overall length of vessel in feet:		Charge per month or fraction thereof:
Over	But not over	
0	25	\$93.10
25	75	\$155.80
75	100	\$475.00
100	150	\$636.50
150	---	\$750.00

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Amdts Adopted 8 Com. Reg. 4392 (Jun. 3, 1986); Amdts Proposed 8 Com. Reg. 4328 (Apr. 18, 1986); Amdts Adopted 7 Com. Reg. 3368 (Jan. 15, 1985); Amdts Proposed 6 Com. Reg. 3182 (Oct. 15, 1984); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

§ 40-20.2-520 Home Port Fee; Rota

Rates and fees for vessels operating in the territorial waters of the Commonwealth on a continuing and long-term basis may be established by agreement, exclusive of this Terminal Tariff, pursuant to the powers conferred upon CPA by law. In the absence of such an agreement, all of the rates and fees set forth in this Terminal Tariff and elsewhere in the Harbor Regulations [NMIAC, title 40, subchapter 20.1] shall apply, except that the dockage rates shall be as follows:

At the commercial port of Rota

Overall length of vessel in feet:		Charge per month or fraction thereof
Over	But not over	
0	10	\$22.80
10	12	\$30.40

12	14	\$38.00
14	16	\$45.60
16	18	\$62.70
18	20	\$76.00
20	22	\$83.60
22	24	\$91.20
24	26	\$100.70
26	75	\$210.90
75	100	\$319.20
100	150	\$425.60
150	---	\$525.00

Modified, 1 CMC § 3806(e), (f).

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Amdts Adopted 8 Com. Reg. 4392 (Jun. 3, 1986); Amdts Proposed 8 Com. Reg. 4328 (Apr. 18, 1986).

Commission Comment: On May 20, 2009, the Commonwealth Ports Authority promulgated emergency regulations and published proposed regulations amending parts 200-600 of the Terminal Tariff Rules and Regulations. 31 CR 29547 (May 20, 2009); 31 CR 29163 (Jan. 2009). Emergency regulations are effective for 120 days. 1 CMC § 9104(b). On August 27, 2009, a notice of adoption amending and adopting the proposed regulations promulgated by CPA was published. 31 CR 29768 (Aug. 27, 2009).

§ 40-20.2-525 Port Service/Vessel Traffic Control Fee

Vessels shall pay a special service fee of \$40.00 for services rendered after normal working hours during the week, weekends, and holidays.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Amdts Adopted 6 Com. Reg. 2785 (May 15, 1984); Amdts Proposed 6 Com. Reg. 2613 (Mar. 15, 1984).

§ 40-20.2-530 Passenger Fee

Unless otherwise agreed to by the Authority, there shall be a charge of \$16.76 for every person that boards a vessel through any port or harbor in the Commonwealth over which

CPA exercises the various powers conferred upon it by law. Crew members of U.S. military vessels as well as crew members of vessels under contract by the U.S. military are exempt from paying the passenger fee.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992).

§ 40-20.2-540 Future Rate Increase

Nothing in the Terminal Tariff in this subchapter shall restrict or limit CPA's authority to increase its fees, rates, and charges beyond that imposed by this tariff, or to implement new fees and charges as necessary to maintain and operate the port and to pay CPA's expenses, including any debt obligation that CPA has with respect to the ports under its jurisdiction.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); 21 Com. Reg. 16953 (Oct. 15, 1999) (correcting typographical errors); Amdts Adopted 21 Com. Reg. 16814 (Jun. 23, 1999); Amdts Proposed 21 Com. Reg. 16673 (Apr. 19, 1999); Amdts Adopted 17 Com. Reg. 13053 (Mar. 15, 1995); Amdts Proposed 17 Com. Reg. 12953 (Feb. 15, 1995).

§ 40-20.2-540 Public Parking Fees

A Public Parking Fee Schedule is hereby instituted at the Port of Saipan in order to generate additional revenue to assist the Commonwealth Ports Authority meet its seaport operating expenses and revenue bond obligations that were issued in order to redevelop and make major improvements to the Port of Saipan. The following public parking fees and provisions are adopted:

(a) All vehicles owned by members of the general public shall park in designated-parking areas only and shall pay a public parking fee per vehicle as follows:

- | | |
|---|---------|
| (1) Minimum fee (one hour or less) | \$1.00 |
| (2) Hourly rate | \$1.00 |
| (3) Each additional hour (or fraction thereof) | \$1.00 |
| (4) Maximum daily rate (more than 10-hours for each 24-hour period) | \$10.00 |
| (5) Fee for lost parking ticket per day | \$10.00 |

(b) Buses (i.e. vehicles with a passenger capacity of more than 15 passengers) that drop-off and pick-up tourists and other passengers at the Port of Saipan shall pay a

monthly fee of \$125.00 per vehicle. Any vehicle with a seating capacity of 15 or less shall pay a monthly fee of \$100.00. Because of the limited parking space at the Port of Saipan for buses, such vehicles may only drop-off and pick-up passengers. If any bus decides to park at the limited bus-parking stalls, however, it shall pay an additional fee of \$10.00 per hour.

(c) Each taxicab shall pay a fee of \$15.00 per month beginning the effective date of the Terminal Tariff, as amended, and shall end on January 30, 2010. After January 30, 2010, each taxicab shall pay a fee of \$25.00. The taxicabs shall park at the taxicab-designated parking stalls.

(d) Seaport tenants who park at the Port of Saipan public parking stalls shall pay an annual fee of \$35.00 per vehicle.

(e) Exemptions. The following vehicles are exempted from paying the foregoing parking fees: CPA-owned vehicles and vehicles owned by CPA officials and employees; CNMI government vehicles; and U.S. government vehicles (including U.S. military).

(f) Vehicles parked in violation of the parking regulations will be towed away from the port premises, at the owner's expense.

(g) Color-coded decals may be issued to identify the various categories of vehicles covered by this section.

(h) Frequent Commuter Parking Permit Fee.

(1) Travelers who commute to and from Saipan on a frequent basis may obtain a frequent commuter public parking permit from the Commonwealth Ports Authority upon paying in advance the prescribed fee. Such permit shall be prominently displayed inside the vehicle dashboard while parked and shall be presented to the parking attendant when exiting. Such permit shall allow for unlimited parking during the specified period.

(2) Frequent Commuter Public Parking Fees:

- | | |
|------------------|----------|
| (i) Annual | \$400.00 |
| (ii) Semi-annual | 250.00 |

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 23 Com. Reg. 17838 (Apr. 23, 2001); Amdts Proposed 23 Com. Reg. 17609 (Jan. 19, 2001); Amdts Adopted 21 Com. Reg. 17001 (Dec. 15, 1999); Amdts Proposed 21 Com. Reg. 16831 (July 23, 1999).

Commission Comment: The Commission did not capitalize "government" in § 40-20.2-545(e).

Part 600 - Space Rentals and Leases

§ 40-20.2-601 Space Rentals and Leases

Rates for lease or rental of any port facility or portion thereof shall be established by the Executive Director.

History: Amdts Adopted 31 CR 29768 (Aug. 27, 2009); Amdts Proposed 31 CR 29547 (May 20, 2009); Amdts Emergency 31 CR 29163 (Jan. 2009); Amdts Adopted 14 Com. Reg. 9522 (July 15, 1992); Amdts Proposed 14 Com. Reg. 9230 (May 26, 1992); Adopted 5 Com. Reg. 2479 (Oct. 20, 1983); Proposed 5 Com. Reg. 1971 (Apr. 29, 1983).

Commission Comment: The Commission deleted a closing quotation mark after “Director.”

CHAPTER 40-30 REGULATIONS GOVERNING THE CONTROL OF PUBLIC FUNDS

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§ 40-30-401 Severability

Chapter Authority: 2 CMC § 2122(j); Memorandum of the Department of Finance, “Delegation of Authority to Regulate Expenditure of Public Funds,” (dated February 5, 2001), reprinted at 23 Com. Reg. 18083 (June 19, 2001).

Chapter History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general comment to chapter 40-10.

Part 001 - General Provisions

§ 40-30-001 Authority

The regulations in this chapter are promulgated by the Commonwealth Ports Authority (CPA) pursuant to the delegation of authority given CPA by the Secretary of Finance under section 1100.14 of the CNMI Department of Finance Regulations for the Control of Public Funds, codified at NMIAC § 70-20.1-301. Section § 70-20.1-301 provides for the Department of Finance to delegate to autonomous agencies such as CPA, who handle their own financial and accounting matters, Finance's authority to regulate the expenditure of public funds. The Department of Finance has the authority to regulate and control the expenditure of public funds, pursuant to article X, section 8 of the NMI Constitution.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-005 Purpose

(a) This chapter is intended to provide CPA with the regulatory and control mechanisms regarding the expenditure of public funds placed under the jurisdiction of the Commonwealth Ports Authority. They are also intended to eliminate as much as possible the duplication of financial and accounting measures regarding the control of expenditure of public funds under CPA since CPA handles its own financial and accounting matters, separate and apart from the Department of Finance. At the same time, the Department of Finance retains its overall constitutional responsibility regarding the control of Commonwealth public funds, including CPA funds.

(b) The basic mission of the Commonwealth Ports Authority, as established by Public Law 2-48 [2 CMC §§ 2101-2190], is to develop, manage and operate efficiently and effectively the public airports and seaports of the Commonwealth in order to improve and advance the economy of the Northern Mariana Islands and promote the welfare and well being of its people.

Modified, 1 CMC § 3806(d).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-010 Definitions

- (a) Commonwealth Ports Authority (CPA): means the government corporation established by Public Law 2-48 [2 CMC §§ 2101-2190], which agency manages and operates the public airports and seaports of the Commonwealth of the Northern Mariana Islands.
- (b) Commonwealth Government: means the local government of the Northern Mariana Islands established under the NMI Constitution.
- (c) Department of Finance (DOF): means the CNMI Department of Finance.
- (d) Expenditure: means the cost of goods delivered or services rendered, whether paid or unpaid, including current operation costs authorized by an appropriations act.
- (e) CPA Employee: A person employed by CPA, whether full-time or part-time.
- (f) CPA Official: Any member of the CPA Board, and any of its management officials.
- (g) CPA Vehicle: Any vehicle owned, leased or that is under the control of CPA.
- (h) Official Representation: Expenditures authorized by law to be incurred by the authorized CPA official for entertainment of off-island government guests, or for other expenses to promote goodwill or the public interest and which are permitted pursuant to this chapter.
- (i) Official Representation and Justification Documentation Form (CPA-OR Form): The form for submission of official representation expenditures with justification to support the expenditure.
- (j) Official Justification For Reimbursement Documentation Form (CPA-OJ Form): The CPA form for submission of official justification for reimbursement of expenditures.
- (k) Person: Any individual firm, corporation, company, joint venture, association, partnership, receiver, club, syndicate, cooperative association, or any other entity.
- (l) Personal Expenditure: An expenditure of public funds for an activity in which a CPA official or employee directly benefits.
- (m) Political Expenditure: An expenditure of public funds for an activity, not related to the official duties of the CPA official in which he or she directly or indirectly benefits through the enhancement of his or her public image.
- (n) Procedure for Official Representation Delegation of Authority to Incur Expenses: The procedure by which a CPA official designated under the definition of “Official Representation” subsection (h) above, may authorize in writing a CPA official or

employee to incur expenses for official representation on his/her behalf as described in § 40-30-130.

(o) **Public Purpose:** It means “public purpose” as defined by Public Law 11-84 and as amended by Public Law 12-2 [1 CMC § 121], and shall include, but not be limited to, any purpose that meets one or more of the following criteria:

- (1) The benefits are equally available to the entire community;
- (2) The service or commodity supplied is one needed by a large number of the community pursuant to customs and traditions, as applicable;
- (3) The enterprise bears directly and immediately upon the public welfare;
- (4) The needs to be met, by its nature, require a united effort under unified control and cannot be served well by separate individuals;
- (5) Where benefits accrue to individuals, the community has an interest in having those individuals benefitted (for example, sports teams, school and school-related activities, recognition of individuals and organizations, funerals, or other recognized cultural or community events);
- (6) The activity or service is in line with the historical development of the Commonwealth and with the general purpose of its constitution and laws;
- (7) A special emergency exists, such as that brought about by war or public calamity, (for example, typhoons);
- (8) The expenditure is reasonably related to the operation of government or its objective; in the promotion of the public health, safety, morals, general welfare, security, prosperity; and the contentment of a community of people or residents within the locality, (for example, fiestas and other community celebrations and expenses related, the hosting off-island visitors attending governmental events, meetings, conferences or state funeral expenses);
- (9) Notwithstanding any other provision of Public Law 11-84, as amended, to the contrary, the expenditures authorized and regulated by legislative rules and expressly declared to be for a public purpose, unless proved by clear and convincing evidence that the expenditure in fact was for a personal or political activity;
- (10) The expenditure promotes and furthers the mission, goals and objectives of CPA as set forth in Public Law 2-48 [2 CMC §§ 2101-2190]. Any determination by CPA as to whether an expenditure furthers the mission, goals and objectives of CPA shall be subject to review by the Secretary of Finance.

(p) **Secretary of Finance:** The Secretary of the CNMI Department of Finance.

(q) **CPA Board Chairman:** means the Chairperson of the CPA Board of Directors and who is the spending authority of CPA under the Planning and Budgeting Act.

(r) **CPA Executive Director:** means the Executive Director of the Commonwealth Ports Authority, and who is the chief executive officer of CPA.

(s) **Travel Authorization Form:** The travel authorization (“TA”) form is a form, which includes the travel itinerary, purpose of the travel, authorized funding, and supporting documentation.

(t) Travel Voucher Form: The travel voucher (“TV”) form is a CNMI government travel voucher claim form submitted to the CPA Executive Director after the completion of travel. The filing of the form is mandatory when funds for travel allowances, per diem, honorarium, or other expenses have been requested and approved.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

Commission Comment: In subsection (g), the Commission inserted the word “that” to correct a manifest error. In subsection (o)(5), the Commission corrected the spelling of “benefitted.” In subsection (o)(9), the Commission changed the final period to a semi-colon to ensure consistent punctuation. The Commission also replaced periods with colons throughout this section to make the punctuation consistent.

Part 100 - Official Representation and Official Justification for Government Business

§ 40-30-101 CPA Policy for Official Representation Expenses Incurred for Entertainment and Promotions

(a) Documentation Required. Official representation and official justification for entertainment and promotional expenses and other governmental business must be completely documented and must at a minimum include

- (1) The name and position of the persons entertained,
- (2) The nature and purpose of the expense incurred and its direct relationship to CPA business,
- (3) A brief description of CPA matters discussed and
- (4) Original receipts and supporting documents must be attached.

(b) Examples of Personal or Political Expenditures That Are Not Allowable. Because all official representation expenditures and other governmental expenses must be for a public purpose, the following are examples of expenditures which are not consistent with the CNMI constitutional mandate that an expenditure of public funds be only for a public purpose; therefore, they will be routinely rejected if submitted for payment or reimbursement.

- (1) Personal items such as food or clothing, personal membership fees, and contributions in cash or donation of any tangible or intangible item or product to any person (other than those which meet the definition of “public purpose” in § 40-30-010(o)).
- (2) Personal travel expenditures of individuals for non-CPA purposes or for individual medical treatment, including but not limited to airline tickets, hotel accommodations, meals, gifts, and related expenses.

- (3) Non-CPA business related travel expenditures for individuals, who are not CPA employees or are not doing any work or providing any service to CPA, including but not limited to airline tickets, hotel accommodations, gifts, meals and related expenses.
- (4) Expenses for a private individual's utility, including water, electricity, gas, telephone, and similar payments.
- (5) Expenses for sponsorship of CNMI sports teams.
- (6) Expenses for fund raising activities for private individuals.
- (7) Any expenditure associated with political campaign functions.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-105 Official Representation and Justification Documentation Forms

In order to document official representation and other governmental expenditures, CPA has adopted forms called the "official representation & justification documentation form (CPA-OR form)" and the "official justification for reimbursement documentation form (CPA-OJ form)" which set forth the minimum applicable requirements to adequately support payment or reimbursement of expenses for official representation and other expenses requiring justification. Those persons either charging or submitting claims for payment or reimbursement for official representation expenses and other items requiring justification must complete the applicable form and attach to it the copies of vendor receipts. All pertinent details concerning the basis for the expense incurred shall be documented and available for review by the Department of Finance and the Office of the Public Auditor. The CPA Executive Director may require additional information if necessary.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-110 Unallowable or Undocumented Official Representation and Other Expenditures

Unallowable or undocumented official representation and other expenditures will not be reimbursed or paid by CPA. In cases where payments for such unallowable or undocumented expenses have been made from CPA funds such as for travel or other advances, from imprest funds or other government funds, the responsible party who incurred the expense shall pay or reimburse the CPA for such expenditures. If not paid within thirty days, CPA may recover the same, after notice to the individual at issue, through either payroll deductions or any other means authorized by law.

Modified, 1 CMC § 3806(e).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-115 CPA Official Representation and Official Justification Procedure for Processing

The CPA Executive Director shall review all vendor billings and receipts covering items of official representation, including any other items requiring justification prior to payment or reimbursement by CPA, such as expenses incurred for official entertainment, CPA celebrations, business meeting luncheons and meals, gifts, fiestas, funerals, school-related expenses or promotional activities. All supporting documentation shall be subject to verification for completeness. The person incurring such expenses is responsible for the preparation and submission of an “official representation and justification documentation form” (CPA-OR form) or an “official justification for reimbursement documentation form” (CPA-OJ form) which details all the pertinent information needed to justify either payment or reimbursement of the expense incurred. In addition, CPA’s expenditure authority must declare and certify that the expenditure incurred was for a public purpose. As expenses are incurred, the person incurring such expenses shall prepare one of these forms and attach to it all supporting documentation, prior to submission to the Executive Director for his review. The form shall be matched with the vendor statement and related invoices and shall be reviewed for completeness as to all pertinent details. If a submission is determined to be incomplete, the Executive Director shall send a memorandum to the individual affected, detailing the deficiencies and potential personal liability of the individual, if the incomplete form is not revised or corrected. The procedure shall be the same as in the case of a person submitting an expense report and claiming reimbursement of an expense for official representation or official justification.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

Commission Comment: The Commission changed “sent” to “send” to correct a manifest error.

§ 40-30-120 Procedure for Disallowance and Collection of Official Representation and Other Expenditures

When an official representation or other expenditure is unauthorized or has not been properly supported, the request for payment or reimbursement will be disallowed. In a case where the expenditure has been paid, the CPA official or employee who incurred the expense will be notified and required to promptly repay or reimburse the CPA. If payment or reimbursement has not been made within thirty days of notification of liability, a notice of payroll deduction will be sent indicating that CPA will deduct from

the employee's paycheck or apply any reimbursement otherwise due the CPA official or employee to the amount owing. If the official is not a CPA employee, CPA may pursue any legal means to recover the amount owing CPA by the CPA official or individual at issue.

Modified, 1 CMC § 3806(e).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-125 Forms for Official Representation and Justification Documentation

The official representation and justification documentation form (CPA-OR form) and official justification for reimbursement documentation form (CPA-OJ form) shall be those prescribed by CPA, which forms shall be similar to those issued by the Department of Finance. The forms may be modified or amended from time to time by CPA. No substitute form will be accepted by CPA.

Modified, 1 CMC § 3806(f).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-130 Procedure for Delegation of Official Representation by Expenditure Authority

(a) A CPA official having expenditure authority under the definition of "Official Representation" in § 40-30-010(h) above may authorize in writing a CPA official or employee to incur expenses for official representation, on behalf of CPA, by providing written approval to the official or employee prior to the official or employee undertaking such official representation expense. The written approval shall specifically state the reason

- (1) Why the official or employee is being authorized to incur the official representation expense;
- (2) The names and positions of persons to be hosted; and
- (3) The date(s) of hosting.

(b) The written delegation allowing official representation expenses to be incurred shall be authorized on a case-by-case basis only, and the written approval from CPA's expenditure authority shall be included as part of the supporting documentation for the expenses incurred. The delegation made and expenses incurred thereunder shall be reviewed by CPA on the same terms and conditions as if the form had been submitted directly by the authorized CPA expenditure authority.

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

In subsection (a), the Commission corrected the cross-reference. The original regulations cited § 40-30-010(i).

Part 200 - Use of Personal Vehicle for Official Business

§ 40-30-201 Reimbursement Procedure for Use of Personal Vehicle for Official CPA Business

CPA shall reimburse one's expenses for private vehicles used for official CPA business, using the standard mileage rate method. CPA generally will not reimburse an official or employee for vehicle expenses for government-owned vehicles or heavy equipment vehicles. The mileage reimbursement method excludes reimbursement for fuel, oil, fluids, repairs, labor, maintenance, car payments, rental or lease payments, depreciation, insurance, tires, license or similar fees, parking fees, moving or parking violations, car wash expenses, loan interest, taxes or interest paid on vehicle.

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-205 Standard Mileage Rate Method

The standard mileage rate is the mileage rate of compensation established by the Office of the Governor for each mile of government use of a private vehicle. The official or employee shall submit to the CPA Executive Director a request for reimbursement, approved by the appropriate CPA division head for mileage reimbursement for private vehicles used for government business, along with a copy of a properly filled out vehicle log record with an original signature for the period covering the reimbursement requested.

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

§ 40-30-210 Vehicle Log Records

Except for CPA emergency vehicles as determined by the Office of the Executive Director, all CPA vehicles shall be equipped with a continuous, vehicle trip log form at all times when in use by CPA officials or employees.

(a) The government official or employee who requests reimbursement for government use of a private vehicle shall prepare and keep a vehicle log book which shall

be maintained by the operator of the private vehicle used for CPA purposes and which shall provide basic trip information such as date, time, places of travel, purpose of travel, beginning and ending speedometer readings, total miles driven, the signature of the vehicle operator and vehicle identification date.

(b) A vehicle trip log form shall be placed in every non-emergency CPA vehicle and private vehicles used for CPA purposes and maintained by the vehicle operator.

(c) The CPA official or employee shall certify on a monthly basis the accuracy of the log forms, sign the log sheets, and transmit a copy of the log when requesting reimbursement of expenses for private vehicles used for CPA purpose.

(d) Failure to maintain these log records shall be grounds for denial of reimbursement of expenses for private vehicles used for CPA purposes.

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

Part 300 - Oversight by Department of Finance

§ 40-30-301 Oversight and Review by the Secretary of Finance of CPA Public Fund Expenditure Activity

The Secretary of Finance retains its overall authority with respect to the control of expenditure of public funds under CPA. The Secretary of Finance may require CPA to file a report in summary form on an annual basis or more frequently when requested, regarding the public fund expenditures of CPA during the year, or on a case-by-case basis, to ensure that the expenditure of public funds by CPA are being made in accordance with this chapter. The Secretary of Finance may require CPA to submit supporting documentation justifying the expenditures made, approved, or incurred by CPA, or any of its directors, officials and employees.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

Commission Comment: The Commission changed “fund” to “funds” in the first sentence to correct a manifest error.

Part 400 - Miscellaneous Provisions

§ 40-30-401 Severability

If any provision of this chapter is held invalid by a court of competent jurisdiction, the validity of the remainder of the chapter shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 23 Com. Reg. 18080 (June 19, 2001); Proposed 23 Com. Reg. 17708 (Mar. 22, 2001).

CHAPTER 40-40
PERSONNEL RULES AND REGULATIONS

CHAPTER 40-40
PERSONNEL RULES AND
REGULATIONS

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Chapter Authority: 2 CMC § 2122(j) and (n).

Chapter History: Amdts Proposed 28 Com. Reg. 25491 (Jan. 30, 2006);* Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

*As of August 31, 2007, a notice of adoption had not been published.

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general comment to chapter 40-10.

Part 001 - General Provisions

§ 40-40-001

[Reserved.]

§ 40-40-005 Personnel Affairs Committee

The Personnel Affairs Committee of the Commonwealth Ports Authority (Authority) shall consist of members of the Board as are appointed thereto by the Chairman of the Board. The Chairman of the Board shall appoint the Chairman of the Committee. The Personnel Affairs Committee shall meet at the direction of its Chairman or of the Board and shall have such powers and authority as are set forth in the Personnel Rules and Regulations set forth in this chapter.

Modified, 1 CMC § 3806(d).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Part 100 - Employment

§ 40-40-101 Coverage

(a) This chapter shall apply to all employees and positions within the Commonwealth Ports Authority of the Commonwealth of the Northern Mariana Islands, except the following employees unless otherwise expressly made applicable to such employees:

- (1) Executive Director;
- (2) Deputy Director;
- (3) Comptroller;
- (4) Port Managers; and
- (5) Contract employees.

(b) As provided in 2 CMC § 2122(n), the Executive Director and his assistants, including the Deputy Director, Comptroller, Port Managers, and other contract employees, necessarily have to be specialists in operating an airport and/or seaport. As such, their employment with the Authority shall be governed by contracts executed by the employee and the Authority.

(c) The appointment of Executive Director shall be announced and selected by the Board of Directors.

(d) The Executive Director shall announce the appointment of Deputy Director, Port Managers and other contract employees, but the selection shall be made by the Board of Directors, taking into account all relevant and material factors, including the recommendation of the Executive Director.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

§ 40-40-105 Selection Process

(a) Authority of Executive Director

The Executive Director, or in his absence, the Deputy Director, shall have the authority to select and appoint all classified employees of CPA, except those positions specifically excluded under CPA's enabling statute, those positions requiring a written contract, and those positions expressly excluded under this chapter.

(b) Procedure for Selection

Whenever a new position is created by the Board or whenever a vacancy occurs in an existing position, the Executive Director, or his designee, shall initiate the following procedure:

(1) Prepare an announcement of the position, which, at a minimum, shall contain the following information:

- (i) Title of position;
- (ii) Pay and pay level of the position;
- (iii) Description of the duties and responsibilities;
- (iv) Geographical location of the position;
- (v) Minimum qualification for the position;
- (vi) Instructions on the place to apply, form of application required, and documentary support, if required; and
- (vii) Period of application, which shall be not less than fifteen days from the original date of publication in a newspaper.

(2) Widely publicize the announcement by posting it within the offices of the CPA, and by publication in a newspaper of general circulation in the CNMI no less than once a week for two consecutive weeks;

(3) Review all applications submitted and set appointments for interview; and

(4) Make a selection and appointment of the applicant he thinks is best suited for the position no later than one week after the interview(s) have been completed.

(5) For the position of Deputy Director, managers, or contract employees, the Executive Director, or his designee, shall submit to the Board, no later than one week after the interview(s) have been completed, all applications, plus a summary of the interviews, with his/her recommendation of the applicant best suited for the position. The Board shall make or reject the appointment no later than the second regular meeting after submission to the Board.

(6)(i) The Board of Directors may waive the above selection procedure if, in its opinion, a qualified employee of the CPA can be promoted to fill a vacancy.

(ii) The Executive Director, upon a vacancy occurring in an existing position, shall make a list of qualified employees of the CPA, if any, capable of assuming the duties and

responsibilities of the vacant position and transmit such list, with his recommendation, if any, to the Board. The Board shall then determine whether the selection procedure is to be used or whether the promotion procedure is to be used.

(iii) If the promotion procedure is decided by the Board for a position other than those listed in § 40-40-101, the Executive Director shall select and promote an existing qualified CPA employee to fill the vacancy.

(iv) If the promotion procedure is decided by the Board for those positions listed in § 40-40-101, including the office of the Executive Director, the Board shall select and promote an existing qualified CPA employee to fill the vacancy. The Board shall take into account the recommendations, if any, of the Executive Director and/or the Personnel Affairs Committee.

Modified, 1 CMC § 3806(c), (d), (e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-110 Types of Employment

(a) Probationary Employment

(1) All employees shall be on probationary employment status for a period of three months following their initial date of employment, promotion, or reclassification.

(2) During the period a new employee is on probationary employment status, he/she may be terminated for cause by the Executive Director. During the period a promoted or reclassified employee is on probationary employment status, he/she may be demoted or reclassified to his/her former position for cause by the Executive Director.

(b) Provisional Employment

A provisional employment is a non-permanent employment usually limited to ninety days and is used to temporarily fill a permanent position in the absence of an appropriate eligible list. The Executive Director may authorize extension of a provisional employment beyond ninety days for a maximum of one hundred and eighty days when the position vacancy examination fails to make available an adequate number of qualified candidates. Any person given a provisional employment must meet the minimum qualifications for the class of position to which appointed.

(c) “Acting” Appointment

(1) An “acting” appointment is an official written designation that an employee will act for a period of up to thirty days in place of a permanent supervisor. When the supervisor’s absence exceeds the initial thirty day period, a new designation shall be made for an additional thirty days. The thirty day renewal of an “acting” assignment may be repeated until the permanent supervisor returns or is appointed to the position.

(2) Whenever the “acting” capacity assignment exceeds ninety days, the employee shall be temporarily promoted/ appointed to the position if the employee meets the qualification standards of the position. If the acting assignment exceeds ninety days and the employee does not meet the qualifications standards for the promotion, the employee

shall be compensated with two steps in the current pay level, but may not exceed the maximum step.

(3) When an employee in the classified service is designated for an acting assignment in the excepted service, the employee shall be required to resign from the classified service in order to accept the said acting assignment. While in the acting assignment, the employee may be entitled to receive a salary equivalent to the salary received by the previous incumbent of the position.

(4) Upon expiration of the acting assignment, the employee will be reinstated to the former position and salary (level and step) that the employee would be receiving had the employee remained in the former position.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsections (a) and (c) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (c)(1) through (c)(4).

§ 40-40-115 Demotion, Suspension and Termination

(a) Grounds for Demotion, Suspension and Termination

Employees may be demoted, suspended, or terminated for cause, which shall include, but not be limited to, the following:

- (1) Non-performance of duties;
- (2) Incompetence (inexcusable failure to discharge duties in a prompt and efficient manner);
- (3) Insubordination;
- (4) Breach of trust, dishonesty, or violation of CPA law, rules and regulations;
- (5) Excessive tardiness or absenteeism;
- (6) Commission of a felony or a misdemeanor involving moral turpitude.

(b) Suspension Procedure

Any employee who is no longer on probationary or provisional employment period may be suspended by the Executive Director for commission of any of the foregoing grounds. An employee may be suspended only after being accorded a hearing by the Executive Director. A suspension shall be for a period not to exceed thirty days, and shall be effective immediately or on the date specified by the Executive Director. A suspended employee shall be put on leave without pay status and shall not be allowed to use annual leave, sick leave or comp-time during the period of suspension. The Executive Director shall notify the employee concerned of the fact of suspension, effective date, and its duration. Such notice shall be given in writing. The action of the Executive Director shall be final. No employee shall be suspended for more than thirty days in any twelve-month period.

(c) Demotion and Termination Procedure

An employee who is no longer on probationary or provisional employment period may be demoted in rank and pay or may be terminated by the Executive Director. The procedure for demoting and/or terminating an employee is as follows:

(1) The Executive Director shall notify the employee concerned of the proposed demotion/termination action, the reasons for it, and schedule a show cause hearing. Such notice shall be in writing;

(2) After a hearing resulting in an adverse ruling, the Executive Director shall apprise the demoted/terminated employee of his/her right to appeal his/her demotion/ termination to the Personnel Affairs Committee. The employee shall present his/her appeal, in writing, to the Personnel Affairs Committee, which will review and act upon the written submission of the employee. The employee shall submit his/her appeal within ten working days after receipt of notice of the Executive Director's action and, if the employee appeals to the Personnel Affairs Committee, the Committee shall act on his/her appeal within fifteen days after it is received from the employee;

(3) The Personnel Affairs Committee shall decide the appeal taken by at least a majority of the members and the decision of the Personnel Affairs Committee shall be final;

(4) In the event that the Committee overrules the demotion/ termination, the employee shall be reinstated with full rights and privileges and shall receive 100% of the pay and associated benefits to which he/she would have been entitled during his/her demotion/termination.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-120 Resignation

(a) When an employee decides to resign from CPA, he/she must submit a letter of resignation, containing the effective date and reason for leaving. This letter should be submitted to the Executive Director at least two weeks before he/she intends to leave CPA.

(b) The Executive Director is responsible for informing the employee his/her obligations to CPA and for securing the return of all CPA property, including keys and identification cards. The employee's last paycheck will not be issued until all obligations to CPA are satisfied.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-40-125 Reduction in Force Planning and Implementation

(a) When a reduction-in-force (RIF) is necessary because of economic constraints, the Executive Director shall recommend to the Board of Directors a RIF action at least sixty days in advance. The Executive Director shall institute administrative procedures to assure that all legitimate possibilities have been exhausted and that formal reduction-in-force is the only viable alternative. The Executive Director shall ensure that the reduction is accomplished with a minimum disruption in operations and a minimum negative impact on each employee affected.

(b) The Board of Directors shall adopt and implement a reduction-in-force measure, as it determines necessary and appropriate under the circumstances.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Part 200 - Remuneration

§ 40-40-201 Time and Attendance Record

All CPA classified employees shall fill out and complete a time and attendance record. The Executive Director shall review and approve time and attendance records. CPA pay periods shall be identical with those of the government of the Northern Mariana Islands. Executive, managerial, and professional employees and contract employees are expected to work the regular hours of employment, but need not time-in or time-out.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-205 Payment of Salary

All CPA employees shall be paid within two weeks after the end of every pay period.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-210 Salary Raise/Anniversary Date

(a) An employee is eligible for a salary raise at any time after the expiration of his/her probationary or provisional period and after the expiration of not less than six months from the date of his/her most recent salary raise; provided, however that no salary raise shall be granted except for sustained superior performance. An employee is also eligible for a salary raise when the employee is permanently reclassified, promoted, or transferred.

(b) An employee's effective date of hire shall be considered as the employee's service anniversary date. The anniversary date shall not be affected by a temporary transfer or assignment.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 2002 notice of adoption changed the proposed language of subsection (b). See 24 Com. Reg. at 19407 (July 29, 2002).

§ 40-40-215 Salary Freeze

(a) Any employee who has reached the maximum pay level and step under CPA's salary schedule (currently pay level 35, step 12), and who has worked at this level for two consecutive years without any pay adjustment may opt to cash-in his/her accrued annual leave at the end of the second calendar year of every two-year period. Employee may cash-in no more than two hundred and eight hours of accrued annual leave every two years; provided that employee has been evaluated and has a satisfactory evaluation for both calendar years; and provided further that CPA has the funds available for such purpose; and provided further that the employee has not received the 5% bonus for that year under Public Law 11-59.

(b) Any CPA employee whose salary has been frozen for two years shall be entitled to receive the five percent bonus provided CNMI government employees under Public Law 11-59, unless such law is hereafter amended or repealed.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The 2002 notice of adoption changed the proposed language of this section. See 24 Com. Reg. at 19407-8 (July 29, 2002).

Public Law 15-57 (effective April 25, 2007), codified at 1 CMC §§ 82601-82605, addresses maximum annual leave accumulation (360 hours) for excepted service employees and lump sum payments for unused annual leave to all government employees. PL 15-57 prohibits reemployment with the CNMI government “until a period equal to the period of annual leave paid in lump sum has elapsed” or the employee elects to pay the equivalent amount “consistent with CNMI regulations.” 1 CMC § 82604. PL 15-57 also prohibits the conversion of sick leave to annual leave and any compensation for unused sick leave hours upon separation from employment for all government employees. 1 CMC § 82603. The provisions of PL 15-57 supercede subsection (a) to the extent that they conflict.

§ 40-40-220 Regular Hours and Overtime

(a) The CPA workweek for all full-time, permanent employees is normally eight hours per day, five days per week. Employees may, however, be asked by the Executive Director or, in an emergency, their supervisor, to work overtime. Other arrangements may be made for a different workweek and workday.

(b) All employees who are not exempted from overtime rate of pay under the Fair Labor Standard Act (FLSA) shall be eligible for overtime compensation at the rate of one and one-half hour’s pay for each overtime hour worked in a workweek. Time lost due to absence without leave (AWOL) or leave without pay (LWOP) will not be included in the total hours worked when calculating overtime compensation.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

The 2002 notice of adoption changed the proposed language of subsection (b). See 24 Com. Reg. at 19408 (July 29, 2002).

Exhibit A, included at the end of this chapter, lists the CPA employees who are not eligible to receive overtime compensation.

§ 40-40-225 Standard Work Hours for ARFF & Ports Police

(a) Aircraft rescue and fire fighters (ARFF) personnel who are scheduled to work on a 96-hour bi-weekly work shift shall have such hours considered as their standard regular bi-weekly working hours. Such ARFF personnel shall be paid 96 hours on a bi-weekly basis for actual hours worked using the employee’s base salary rate. In the event such employee takes annual leave, sick leave, or compensatory time off from work in a given bi-weekly period, the basis of the bi-weekly payment shall be made on the actual hours

worked plus the number of leave hours taken. Under emergency situations, i.e., response to emergencies, such employee shall be entitled to overtime pay if the employee works in excess of 96 hours.

(b) Ports police personnel who are scheduled to work on an 86-hour bi-weekly work shift shall have such hours considered as the standard regular bi-weekly working hours. Such ports police personnel shall be paid for 86 hours on a bi-weekly basis for actual hours worked using the employee's base salary rate. In the event such employee takes annual leave, sick leave, or compensatory time off from work in a given bi-weekly period, the basis of the bi-weekly payment shall be made on the actual hours worked plus the number of leave taken. Under emergency situations, i.e., response to emergencies, such employee shall be entitled to overtime pay if the employee worked in excess of 86 hours.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The 2002 notice of adoption changed the proposed language of this section. See 24 Com. Reg. at 19408 (July 29, 2002).

§ 40-40-230 Compensatory Time (Comp-time) Policy

Compensatory time-off policy is hereby established to provide official guidelines on the earning and usage of comp-time hours by CPA employees. For any comp-time issue, which is not addressed in this policy, the CNMI Personnel Service System Rules and Regulations (PSSR) [NMIAC title 10, chapter 20.2] or the U.S. Federal Labor Standard Act (FLSA) shall serve as the guidelines to be followed. This policy governs the earning and usage of comp-time hours by permanent, full-time employees who are eligible for overtime pay.

(a) Permanent and Full-time Employees Who are Eligible for Overtime Pay

Permanent and full-time employees are generally entitled to earn overtime pay; however, under conditions of financial hardship or funding shortfall to pay for overtime compensation, and upon issuance of an official notification of such condition by the Executive Director, employees shall accrue comp-time hours instead of overtime hours on hours worked in excess of forty hours in any workweek period. Comp-time hours shall be granted using the following procedures:

(1) Hours eligible for comp-time shall be based on hours that exceed 40 hours performed in any workweek period. All hours used in computing comp time hours shall mean actual hours worked and shall not include any time off taken from vacation, sick leave, annual leave, maternity, paternity or comp time.

(2) A factor of 1.5 shall be used in the determination of comp-time hours, i.e., actual comp time hours worked x 1.5 = comp-time earned.

(3) All comp time hours must be approved, in advance, by the department supervisor and the Executive Director or his designee and recorded in an approved form from the accounting department.

(4) All approved comp-time hours must be submitted to the accounting department at the end of each pay period along with the department's official time and attendance sheet.

(5) Employees are authorized to accrue a maximum of 80 hours of comp-time annually, i.e., 53 hours x 1.5 = 80 hours (annual shall mean on each employee's anniversary or date of hire). The employee shall have the option of applying for time off using the unused hours in excess of 80 or to transfer the excess hours to annual leave.

(6) In the event of employment termination, resignation, reduction in force, or retirement, an employee is entitled to receive compensation on all accrued comp-time hours based on his or her most recent hourly base rate.

(b) CPA department heads and supervisors shall use sound management judgment in granting overtime and comp-time hours and shall take into consideration any impact on CPA's operations and finances. To this end, overtime and comp time hours may be granted only if necessary to carry out essential services or in emergency and urgent situations. An employee is also encouraged to use his or her comp time hours within four pay periods from the date earned.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-40-235 Policies and Procedures; Travel

(a) No travel shall be authorized without an approved travel authorization for within and outside of the CNMI. There shall be a memo by the Executive Director, Deputy Director or designated staff (by memo) indicating the purpose of the travel, time frame, destination and car rental cost if any to be incurred. It shall be addressed to the Comptroller and attached to either of these travel authorization forms. No reimbursement for a car rental shall be made to an employee if such expense is not approved on this memo.

(b) The travel voucher form shall be used to liquidate travel advance on the books. In accordance with 1 CMC § 7407(b) of the Commonwealth Code, "Within 15 days after completion of government travel, the traveler shall submit a detailed trip report and documented travel expenditures to the approving authority. The submissions shall be a public record. A person who has failed to make a timely submission shall not receive travel advances until his/her untimely submission is remedied." In addition, supporting documents (i.e. analysis of per diem rates, airline tickets, room and board statements, invoice, and the like) shall be attached to this form.

(c) Below is the fixed per diem scale which shall be followed whenever an employee has been authorized to travel off-island. Presently, it is the scale which is being used in the CNMI and the per diem rate varies by destination:

No.	Destination	Daily Per Diem Rate
(1)	*Within the CNMI Saipan Rota Tinian	\$175.00 125.00 100.00
(2)	Guam	175.00
(3)	U.S. Mainland (excluding Hawaii, California, New York & Washington, D.C.)	200.00
(4)	Hawaii, California, New York & Washington, D.C.	250.00
(5)	Far East and Southeast Asia	200.00
(6)	Japan	275.00
(7)	FSM, Palau and Marshall Islands	125.00

(8) The Executive Director may arrange for alternative lodging and meal accommodations to travelers in which the per diem shall be lessened to indicate only actual costs incurred.*

*So in original.

(d) If an employee returns earlier than his itinerary, as shown on the request for travel authorization, unearned per diem shall be returned to the agency. Payroll deduction will follow when the employee liquidates his travel advance and cannot pay the unearned portion of travel advance payments.

(e) Travel shall not be undertaken by any employee unless it is within the budget guidelines.

(f) Procedure No. 1: The Guam, U. S. Mainland, and foreign country travel authorization procedure should observe the following internal controls:

- (1) Maintain a log sheet for every travel request authorization that is issued to the traveler. The headings of the log sheet should include date, name of traveler, travel authorization number, and destination.
- (2) Complete the travel form as applicable and necessary.
- (3) Attach the required travel request memo as described in subsection (a).
- (4) Distribute triplicate copies accordingly: white copy goes to the traveler; yellow copy goes to comptroller; green copy goes to general file.
- (5) Ascertain that the expenditure is within budget guidelines.

(g) Procedure No. 2: Inter-island travel authorization form should observe the following internal controls:

- (1) Maintain a log sheet for every travel request authorization that is issued to the traveler. The headings of the log sheet should include date, name of traveler, travel authorization number and destination.
- (2) Complete the form as applicable and necessary.
- (3) Attach the memo as described in subsection (a).
- (4) Ascertain that the expenditure is within budget guidelines.
- (5) Ensure that the form is attached with travel agency invoice, pink copy of the check, and accounts payable voucher.

(h) Procedure No. 3: CPA's accounting department shall ensure that the following internal controls are observed on the travel voucher form whenever it is issued to an employee or traveler:

- (1) Fill out the required information.
- (2) Supporting documents (i.e. trip reports, documented travel expenditures and the like) are attached to the form.
- (3) Traveler is in compliance with CNMI laws.
- (4) Initiate payroll deduction and deny subsequent travel advance to those employees whose completion of travel exceed 15 days and have not filed the required travel voucher.

(i) Procedure No. 4: A sub-ledger should be set up for each traveler and a monthly reconciliation is required. The comptroller shall review and concur with the monthly reconciliation.

(j) Procedure No. 5: A monthly review of the subledgers shall be made by the accounting department to ensure that outstanding travel advances are liquidated in compliance with CNMI laws. If outstanding travel advances are not liquidated when due, the airport and seaport accountant shall contact the traveler to file the travel vouchers. At the same time, the traveler shall be informed that a payroll deduction will be made and subsequent travel advance shall be denied.

Modified, 1 CMC § 3806(c), (f), (g).

History: Amdts Proposed 28 Com. Reg. 25491 (Jan. 30, 2006);* Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

*As of August 31, 2007, a notice of adoption had not been published.

Commission Comment: Public Law 15-86 (effective Sept. 26, 2007), codified at 1 CMC §§ 7407(d) and (e), establishes a uniform per diem policy for government travel and prohibits the purchase of first class, business class or other premium airline tickets by the government. The provisions of PL 15-86 supercede subsection (c) to the extent that they conflict.

The last five paragraphs were not designated. The Commission designated subsections (f) through (j).

In subsection (j), the Commission changed the word “he” to “the” to correct a manifest error.

§ 40-40-240 Policies and Procedures; Official Representation

(a)(1) The Executive Director, Deputy Director, Comptroller, Saipan Airport Manager, Saipan Seaport Manager, Rota Ports Manager, and Tinian Ports Manager are authorized to incur charges for official representation. Other staff shall be authorized on a case-by-case basis by the Executive Director or Deputy Director.

(2) Official representation for the Board of Directors shall be accounted for separately and authorized by the Board Chairman, depending on availability of funds.

(b) When an authorized official incurs official representation expenses, the purpose of the representation and names of people entertained shall be indicated on the supporting document (i.e. invoice, or docket) at the time invoice or docket is signed.

(c) An official representation shall be incurred to promote goodwill or further the best interest of the Commonwealth Ports Authority. The parties to be entertained may include CPA officials, CNMI and federal government officials, official guests of CPA, and other officials. Contractors and consultants may be entertained as approved by the Executive Director or Deputy Director.

(d) Any unauthorized official representation expense made by an employee shall be subject to disciplinary action.

(e) Procedures to Follow: The supporting documents (i.e. invoices, docket, and the like) charged as official representation shall comply with the following internal controls:

(1) Verify the name of staff that made the charges by reference to subsection (a).

(2) Ascertain that the purpose and the names of guests are indicated on the supporting documents (i.e. invoice, docket and the like).

(3) Verify the budget to ensure that expenditure is within budget guidelines.

(4) In the event that an official representation expense is unauthorized, payroll deduction shall be made and the Comptroller shall bring this incident to the attention of the Executive Director and Deputy Director.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The paragraphs of subsection (a) and the final paragraph of this section were not designated. The Commission designated subsections (a)(1) and (a)(2) and (e).

§ 40-40-245 Travel Reimbursement

(a) An employee traveling on official CPA business shall receive travel and per diem compensation at the rates and guidelines established for CNMI executive branch employees.

(b) An employee may receive reimbursement for extraordinary expenses actually incurred in the performance of his/her duties upon the submission of receipts or other proof of extraordinary expenses to the Executive Director and the specific approval of the Executive Director to reimburse the employee for his/her extraordinary expenses.

(c) Payment of per diem shall be in accordance with official CNMI policy and procedures.

(d) Travel Reimbursement Forms. Travel expenses should never be billed directly to CPA but should be paid by the employee and reimbursement sought. Necessary receipts must be attached before reimbursement will be made. An approved travel authorization form is required for every trip within the CNMI that extends more than two quarters of a day and away from an island where the employee's office or residence is located.

(e) Travel Advances. Travel advances may be made for extended trips in accordance with the official CNMI policy and procedures. A travel advance is secured by completing a travel authorization form and forwarding it to the Executive Director. Travel advances must be accounted for by a travel reimbursement claim after the trip or the advance will be deducted from the employee's wages. No more than 100% of the per diem estimated to be due on the travel authorization may be advanced.

(f) Suspension of Charges. Items on travel reimbursement claims, missing receipt affidavits, and travel authorization forms which violate the regulations stated above or the instructions which appear on the forms themselves will be suspended and a notice of explanation will be forwarded to the employee concerned. In order to be allowed, such items must be included in a subsequent travel expense statement in accordance with CPA travel regulations. Reclaimed items must be fully itemized and must be supported by the original notice of explanation or a copy thereof.

(g) Limitation of Claim Period.

(1) The travel reimbursement claim should be completed by a traveler who has qualified for reimbursement of travel expenses. All necessary receipts must be attached before reimbursement will be made. In the event no receipt is available for an expenditure for which reimbursement is sought, reimbursement is conditioned upon substantiation of the expense in a manner satisfactory to the Executive Director. An approved travel authorization form must be attached for every trip reported.

(2) Travel authorization forms shall be approved by the Executive Director for travel within the CNMI, and in the case of travel outside the CNMI, by the Chairman of the Board. It is expected that the travel authorization form relating to any given trip will be approved prior to the incurring of expenses.

(h) Erasures and Alterations. Erasures and alterations in totals on any travel reimbursement claim or travel authorization form must be initialed by the traveling employee. Erasures or alterations in totals on vendor's receipts must be initialed by the vendor or his/her representative.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Proposed 28 Com. Reg. 25491 (Jan. 30, 2006);* Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

*As of August 31, 2007, a notice of adoption had not been published.

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

In subsections (c) and (e), the Commission changed "GNMI" to "CNMI" to correct manifest errors.

§ 40-40-250 Outside Gainful Employment

A full-time employee who wishes to engage in outside gainful employment must have the express prior written approval of the Executive Director. In considering a request to engage in outside employment, the Executive Director shall be sensitive to the employee's financial needs and whenever warranted, may:

(a) Recommend the employee for a salary increase or promotion to preclude the need for outside work; or

(b) Permit outside employment if he/she deems it not likely to conflict with the employee's performance of his/her duties to CPA.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-255 Severance Pay

(a) An employee who is involuntarily terminated from CPA not for cause shall be entitled to severance pay at the time of his/her termination. A general reduction-in-force is an involuntary termination not for cause. An employee's termination will not be

considered involuntary if he/she was hired on a temporary basis or if he/she has not completed his/her three-month probationary period. Nor shall termination be considered involuntary if the employee is offered and declines to accept another position with CPA which is equivalent in function, seniority, tenure, and compensation with any necessary moving expenses paid.

(b) The amount of severance pay to which an eligible employee is entitled after he/she has worked for CPA for 36 months shall be equivalent to 80 hours' pay at the employee's regular hourly rate. Eligible employees who have not completed 36 months of employment shall be entitled to 1/36th of 80 hours regular pay for every month they have been employed by CPA. i.e.

Number of months

36 months x 80 hours' regular pay

(c) For the purpose of computing severance pay, an employee's period of employment shall be regarded as commencing on the first day of the month following the employee's date of employment and ending on the last day of the month in which the employee terminates.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (c).

§ 40-40-260 Premium Pay

(a) Hazardous Pay.

Employees meeting the qualification criteria below whose occupation involves unusual and extreme hazards to their health and safety, shall be paid a differential to their base salary rate at the rate established for each hazardous work condition listed below. To qualify for payment of hazardous work differential, the following conditions of work must be met:

(1) Extremely high temperature - 25%

Working around and in confined spaces wherein the employee is subject to temperatures in excess of 100 degrees Fahrenheit, or exposure to burning gasoline or fuel as a result of automobile, equipment or aircraft accidents and impacts, where such exposure is not practically eliminated by the mechanical equipment or protective devices being used. Departments usually affected: ARFF.

(2) High voltage due to electricity or energy - 25%

Working on energized electrical lines rated at no less than 4,160 volts and suspended from utility poles or towers during adverse weather conditions such as steady and heavy downpour of rain, high winds, lightning or similar environmental conditions which make the work unusually hazardous. Departments usually affected: ARFF, terminal maintenance, and operations.

(3) Open trenches - 25%

Working in open trenches no less than 15 feet deep from the normal ground level until proper shoring has been installed. Departments usually affected: ARFF, terminal maintenance, operations and seaport.

(4) Poisons (toxic chemicals) - low degree hazard - 10%

Working with or in close proximity of poison substance (toxic chemicals other than tear gas or similar irritating substance) in situations in which the nature of the work does not require the employee to be in direct contact with, or exposure to more toxic agents as described under high hazard in subsection (a)(13) of this section and where protective devices and/or safety measures have not practically eliminated the potential for personal injury, i.e. handling for shipping, marketing, labeling, hauling and storing laded containers of toxic chemical agents that have been monitored. Departments usually affected: ARFF, operations and seaport.

(5) Micro-organism - low degree hazard - 10%

Working with or in close proximity to micro-organisms in situations for which the nature of work does not require the individual to be in direct contact with primary containers of organisms pathogenic for human beings such as culture flasks, culture test tubes, hypodermic syringes and similar instruments, and biopsy and autopsy material wherein the use of safety measures have not practically eliminated the potential for personal injury. Department usually affected: ARFF.

(6) Underground work - 25%

Working underground and performing construction of tunnels and shafts, and the inspection of such underground construction until the necessary lining of the shaft or tunnel has eliminated the hazard. Department usually affected: ARFF, terminal maintenance and operations.

(7) High work - 25%

Working, training, or repelling on any structure of at least 20 feet above the base level, ground, deck, floor, roof, etc., under open conditions, and if the structure is unstable or if scaffolding guards or other suitable protective facilities are not used, or if performed under adverse conditions such as darkness, lightning, steady and heavy downpour of rain, or high wind velocity. Department usually affected: ARFF, terminal maintenance, operations and seaport.

(8) Unsafe structure - 25%

Working within or immediately adjacent to building or structure which has been severely damaged by earthquake, fire, typhoon, flood or similar cause and the structure has been declared unsafe by a competent technical authority and when such work is considered necessary for the safety of personnel or recovery of valuable materials or equipment, and the work is authorized by a competent authority. Departments usually affected: ARFF, terminal maintenance, operations and seaport.

(9) Dirty work - 15%

Performing work which subjects the employee to soil the body or clothing:

(i) Beyond that normally to be expected in performing the duties of the classification; and,

(ii) Where the condition is not adequately alleviated by the mechanical equipment or protective devices being used, or which are readily available, or when such devices are not feasible for use due to health considerations (excessive temperature, asthmatic condition, etc.); or

(iii) When the use of mechanical equipment or protective devices or protective clothing results in an unusual degree of discomfort. Departments usually affected: ARFF, terminal maintenance, operations and seaport.

(10) Law enforcement activities - 25%

When assigned duties that exposes the employee to unusually hazardous factors, i.e. motorcycle duty, “stake out” where the use of firearms is inevitable. The differential pay shall only be applicable during times of exposure. Department usually affected: ports police.

(11) Communicable/infectious disease - 25%

Working with or in close proximity to micro organisms in situations for which the nature of work requires the employees to be in direct contact with communicable/infectious diseases such as tuberculosis, human immuno deficiency virus, hepatitis B, measles, mumps and other reportable communicable/infectious diseases. Department usually affected: ARFF and ports police.

(12) Live bombs - 25%

Working with or in close proximity to any situation where a live bomb is being moved or defused. Departments usually affected: ARFF, ports police and operations.

(13) Poisons (toxic chemicals) high degree hazard - 25%

Working with or in close proximity to a combination of burning toxic materials such as paints, synthetic or nylon materials in which the nature of work requires the individual to be in direct contact with, or be exposed to the hazard. Departments usually affected: ARFF and operations.

(14) Low voltage electrical energy - 25%

Contact with energized electrical household lines at 110 to 120 volts which are suspended or have fallen from a structure, and where water on the floor serves as a conductor making the work potentially hazardous. Departments usually affected: ARFF, terminal maintenance and operations.

(15) Grass or natural cover fires - 15%

Working with or in close proximity to grass or natural cover (trees) fires that are being extinguished. Department usually affected: ARFF.

(16) Fuel spills - 15%

(i) Working with or in close proximity or in contact with fuel spills of over 10 square feet in area. Department usually affected: ARFF and operations.

(ii) The differential pay requires the approval of supervisors and shall only be applicable to time of exposure.

(b) Night Differential.

Additional compensation in the form of a night work differential of fifteen percent of base salary rate or adjusted base salary rate is paid for all hours worked between 6:00 p.m. and 6:00 a.m., when such hours are included within a regularly scheduled tour of duty.

(1) Control Criteria. To be eligible to receive payment of a night work differential, the following criteria must be met:

(i) Payment will be made only for actual hours worked which fall between 6:00 p.m. and 6:00 a.m.

(ii) The above is restricted to include only those regularly scheduled work hours within the specified time period which constitute all or a part of the employee's regular hours of duty.

(2) Non-payment of Night Work Differential. Payment of a night work differential will not be made for the following situations:

(i) An employee whose regular hours of duty included scheduled hours during the period of 6:00 p.m. to 6:00 a.m., is absent and does not actually perform work for the hours involved;

(ii) An employee required to perform work during the hours of 4:30 p.m. to 7:30 a.m. which is not a part of the employee's regularly scheduled hours of night work duty; or

(iii) An employee who is paid for remaining on call to duty in excess of the normal forty hour work week shall not be eligible for payment of night differential for any work performed while on call.

(c) Typhoon Emergency.

Employees who are required by the Executive Director to work in a location and during a period of time in which a typhoon or tropical storm emergency has been declared by the Governor shall be compensated as follows:

(1) For the employee's regularly scheduled work hours during which other government employees are released from work as a result of the emergency, the employee shall receive pay for administrative leave, and shall also receive pay for the actual hours worked; and

(2) For all other hours such employees are required to work while such declaration of emergency shall remain in force, compensation shall be at the rate of two and one-half times the base salary rate. Employees being paid typhoon emergency differential are not eligible to receive any other premium pay or overtime pay for the same period.

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

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsection (a)(16) were not designated. The Commission designated subsections (a)(16)(i) and (a)(16)(ii).

The Commission inserted periods at the end of subsections (a)(1) through (a)(16). In subsection (a)(11), the Commission changed "emmuno" to "immuno" to correct a manifest error.

Part 300 - Personnel Policies

§ 40-40-301 Grievance Procedure

The following procedure shall be followed in reviewing and settling an employee grievance. An employee may at all times be assisted by a representative of the employee's choice, at the employee's sole expense.

(a) The employee shall first try to resolve the grievance with the immediate supervisor, fellow employees or organization official concerned;

(b) If the employee is not satisfied with the understanding reached through such discussion, the employee shall take up the matter with the immediate supervisor. If the immediate supervisor was the person with whom the employee had first discussion, the employee should follow step “c” below;

(c) If the employee is dissatisfied with the understanding reached through consultation with the immediate supervisor, the employee may deliver his/her grievance within five working days, in writing, to the Executive Director. The Executive Director will consult with the employee and others concerned, and will try to resolve the grievance. Such consultation may be in writing or in person;

(d) If the employee is dissatisfied with the efforts of the Executive Director, or if the Executive Director is the person with whom the employee has the grievance, the employee may request in writing a review of the matter by the Personnel Affairs Committee. The Personnel Affairs Committee will hold a hearing within fifteen days after the employee’s request is received unless the employee agrees to a later date;

(e) The Personnel Affairs Committee shall resolve the grievance by majority vote. The decision of the Personnel Affairs Committee shall be final.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-305 Annual Evaluations

(a) Each CPA classified employee shall be evaluated annually. Evaluations shall be written on forms provided by the Executive Director, who will require the evaluator to assess the employee’s performance of the duties listed on the employee’s position description as well as comment on the employee’s dependability, resourcefulness, and cooperativeness. Evaluation forms will also ask for the evaluator’s recommendation regarding any increase in the employee’s salary.

(b) Completed evaluations shall be returned to the Executive Director, and a copy given to the employee. The evaluator shall discuss the evaluation with the employee so that constructive criticism may be exchanged between the evaluator and the employee.

(c) The employee will be invited to evaluate himself or herself, and that self-evaluation will be included in the composite evaluation for all purposes.

(d) Employees other than the Executive Director will be evaluated by their immediate supervisors, subject to review and approval by the Executive Director. The Executive Director shall be evaluated by the Board of Directors.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (d).

§ 40-40-310 Political Activities

An employee shall devote his/her entire working time to carrying out the functions, purposes and policies of CPA in accordance with procedures established by CPA. All employees shall refrain from any political activity while on duty.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-315 Policy Statement on Equal Employment Opportunity

(a) Policy Statement. The Commonwealth Ports Authority (CPA) hereby declares as its official policy that all U. S. citizens and legal residents of the Commonwealth shall be accorded equal opportunity in employment by the Authority, and that the Authority's employment practices shall be fair and non-discriminatory.

(b) Statutory and Regulatory Basis.

(1) The CPA hereby affirms and adopts the Commonwealth's policy on non-discrimination, as stated in 1 CMC § 8102(a):

It is the policy of the Commonwealth that the personnel system hereby established be applied and administered in accordance with the following merit principles:

- (a) Equal opportunity for all regardless of age, race, sex, religion, political affiliation or place of origin;
- (b) Impartial selection of the ablest person for government service by means of competitive tests which are fair, objective, and practical;
- (c) Just opportunity for competent employees to be promoted within the civil service;
- (d) Reasonable job security for the competent employee;
- (e) Systematic classification of all posts through adequate job evaluation;
- (f) Fair and reasonable grievance procedures for all employees pertinent to condition of employment; and
- (g) Proper employer-employee relations to achieve a well-trained, productive and happy work force.

(2) The Authority further adopts the policy stated in the Personnel Service System Rules and Regulations, NMIAC § 10-20.2-020, as amended January 15, 1997, which reads:

It is the policy of the government that the personnel system shall be applied and administered according to the principle of equal opportunity for all persons regardless of age, race, color, sex, national origin, place of origin, marital status, political affiliation or belief, or disability.

(c) Purpose of Policy. It is the purpose of this statement of policy to make clear that the Commonwealth Ports Authority will provide equal opportunity to all qualified applicants and employees, and will exercise nondiscrimination in all employment practices, consistent with United States and Commonwealth law. The Authority believes that it has a duty, to ensure that a person's opportunity to succeed should be determined by the person's ability, skill and training, and not by race, religion, sex, or other suspect classification, with respect to equal employment opportunity.

(d) Establishment of Office of Equal Employment Opportunity. There is hereby established an Office of Equal Employment Opportunity within the Commonwealth Ports Authority. The Executive Director of the Authority shall serve as the Equal Employment Opportunity (EEO) Officer. There shall also be an EEO coordinator, and assistant EEO coordinators for Tinian and Rota. Appointments to these positions will be made by the Board of Directors or the Executive Director as may be delegated by the Board.

(e) Coordination with CNMI Office of Personnel Management in Training and Implementation.

The Governor, as overall EEO Officer for the Commonwealth government, has appointed the Director of Personnel as Deputy EEO Officer. The Director of Personnel, in turn, has appointed an Equal Employment Opportunity Coordinator for the Commonwealth EEO Program, within the Commonwealth Office of Personnel Management. The Commonwealth Ports Authority EEO officers and coordinators shall coordinate the establishment, implementation and training for the Authority's EEO program with the Commonwealth EEO Coordinator and Office of Personnel Management. That office will provide assistance to the Authority's EEO Office in such matters as investigations of complaints, hearings, and so forth. Any hearing held on complaints filed shall be conducted pursuant to the Authority's EEO program and the procedures established there under.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

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

§ 40-40-320 Policy Against Sexual Harassment

Prohibition Against Sexual Harassment. It is the policy of the Commonwealth Ports Authority (CPA) that all of its employees shall enjoy a work environment free from sexual harassment and all other forms of job discrimination.

(a) **Sexual Harassment Defined.** Sexual harassment is unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature which creates an intimidating, hostile or offensive work environment which impacts on an employee's work performance. Conduct of a sexual nature includes: offensive sexual flirtation, verbal sexual harassment, direct or indirect pressure for sexual activity, degrading comments about a person or that person's appearance, physical assault and battery, the display of sexually explicit or suggestive objects or abusive contact.

(b) **Sexual Harassment Is Prohibited by Law.** Sexual harassment is illegal under Title VII of the Civil Rights Act of 1964, as amended and as implemented by 29 CFR 1604.11. It is also prohibited under the CNMI Personnel Service System Rules and Regulations [NMIAC, title 10, chapter 20.2].

(c) **Policy Against Sexual Harassment.**

(1) Sexual harassment is specifically prohibited by CPA and will not be tolerated, regardless of whether the offensive conduct is committed by its supervisors, managers, non-supervisors (coworkers) or non-employees (consultants, contractors, general public).

(2) All CPA employees are encouraged to report any violation of this policy. Management cannot address sexual harassment in the work place until incidents of sexual harassment are reported. Employees will not be retaliated against for making truthful statements about alleged harassment.

(3) No employee will be denied or receive employment opportunities and/or benefits because of a sexual relationship of a co-worker or supervisor. No employee or non-employee shall imply to an employee or applicant for employment, that conduct of a sexual nature will have an effect on that person's employment, assignment, advancement or any other condition of employment.

(4) Supervisors, by law, are responsible for the acts of sexual harassment in the work place when they know or should have known of the prohibited conduct but fail to prevent such conduct or fail to take steps to stop such act or conduct from recurring.

(5) Each division manager shall distribute a copy of this policy to every employee and shall post this policy in an accessible location.

(6) All supervisors will be provided training on conducting an investigation and resolving cases of harassment.

(d) **Sanctions Against Sexual Harassment.** CPA shall take immediate and appropriate action for acts which violate this policy against sexual harassment. Such actions may include, if warranted, suspension from work without pay, demotion, reprimand, termination, or other personnel action deemed appropriate under the circumstances.

(e) **Reporting Procedure.**

(1) All acts or conduct of sexual harassment shall be reported to the division manager, unless he or she is the harasser, or to the Executive Director or his designee. One may make a verbal report first and if assistance is needed, the complainant shall be assisted in preparing a written report of the incident(s) by the division manager or by the Executive Director or his designee.

(2) The written report should contain the following information:

(i) The identity of the aggrieved employee and the division in which the employee works;

(ii) A detailed description of the grievance;

(iii) The corrective action desired; and

(iv) The name of the employee's representative, if any.

(3) CPA management will examine the grievance, conduct an investigation, discuss it with the grievant or his representative and the alleged harasser, and render a decision, in writing, within fourteen calendar days after receiving the complaint report.

(4) If management is not successful in settling the grievance to the complainant's satisfaction within fourteen days after it is presented to the employer in writing, the employee shall, within fourteen calendar days after receiving written notification of the decision, submit a petition to the Personnel Affairs Committee of CPA for a review of such decision by the Personnel Affairs Committee.

(5) The CPA Personnel Affairs Committee shall conduct a de novo hearing on the grievance filed by the complainant and render a final decision on the matter, no later than thirty days thereafter.

(f) Equal Employment Opportunity Commission.

(1) If a grievance complaint is not acted upon to a complainant's satisfaction, the complainant may file a complaint with the federal Equal Employment Opportunity Commission (EEOC).

(2) The EEOC in Hawaii is located at 300 Ala Moana Blvd., Room 7123A, Box 50082, Honolulu, Hawaii, 96850, or call (808) 541-3120.

(3) The EEOC in San Francisco, California is located at 901 Market Street, Suite 500, San Francisco, California, 94103, or call (415) 356-5100.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsection (f) were not designated. The Commission designated subsections (f)(1) through (f)(3).

Part 400 - Employee Benefits

§ 40-40-401 Eligibility for Benefits

(a) A permanent full-time employee is eligible for all employee benefits enumerated in this chapter. Such employees shall include classified, unclassified, contract employees.

(b) Employees on leave of absence for 50% or more of a pay period shall not accrue annual or sick leave for that pay period. If the employee is on leave of absence for less than 50% of a pay period, the employee shall accrue annual and sick leave at the normal rate. No other benefits shall accrue for that employee.

Modified, 1 CMC § 3806(d).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The 2002 notice of adoption changed the proposed language of this section. See 24 Com. Reg. at 19409 (July 29, 2002).

§ 40-40-405 Annual Leave

(a) Employees shall accumulate annual leave time at the same rate as such leave time would be accumulated by employees of the government of the Commonwealth of the Northern Mariana Islands; provided, however, that CPA employees will be given credit, for the purpose of computing the rate at which leave time will be accumulated, for prior employment with the government of the Trust Territory of the Pacific Islands and the government of the Northern Mariana Islands.

(b) If an official holiday falls while an employee is on annual leave, that day will not be deducted from accrued annual leave. If an employee is sick while on annual leave, the employee may charge that time to accrued sick leave.

(c) Annual leave must be approved by an employee's supervisor prior to the employee's taking it. The Executive Director or his designee must also approve it in writing.

(d) Any annual leave accumulated in excess of 360 hours at the end of any calendar year shall be converted to sick leave on the last day of such calendar year. Any annual leave accumulated in excess of 360 hours on the date of an employee's termination or resignation of employment shall be converted to sick leave as of the effective date of such termination or resignation of employment.

(e) An employee whose employment is terminated, or who resigns his/her employment, and who has been employed for more than one year prior to the effective date of such termination or resignation, shall be entitled to receive payment for any and all unused annual leave, up to a maximum of 360 hours.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (e).

§ 40-40-410 Sick Leave

(a) An employee commences to accrue sick leave at the beginning of the pay period following the employee's employment. Each employee will accrue 4 hours of sick leave per pay period. If an employee's accrued sick leave is depleted, any additional days the employee is not at work will be deducted from accrued annual leave. When accrued annual leave has been depleted, the employee will go on leave without pay (LWOP). If an official holiday occurs while an employee is on sick leave, that day will not be deducted from accrued sick leave.

(b) When an employee is absent due to illness, the employee should give notice of his/her illness to the employee's office by twelve noon or the entire day may be charged against annual leave, at the discretion of the immediate supervisor. Each employee returning from sick leave after an absence of three days or more shall furnish a written certification from the attending physician regarding the employee's illness. If the required certification is not furnished, all absence which would have been covered by such certification shall be indicated on the time and attendance record and payroll as absent without leave (AWOL).

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

Public Law 15-69 (effective June 5, 2007), codified at 1 CMC § 8276, authorized government employees to apply for sick leave to attend to an immediate family member who is sick. Public Law 15-116 (effective Nov. 29, 2007), codified at 1 CMC §§ 8265-8267, which repealed and reenacted PL 15-69, requires that sick leave requests to attend to immediate family members in excess of two days must be supported by a certified medical statement. The provisions of PL 15-116 supercede subsection (b) to the extent that they conflict.

§ 40-40-415 Sick Leave Donation

(a) An employee may, in writing on a CPA-approved form, donate his/her accrued sick leave to another CPA employee who has completed his/her probationary status and

who is need of medical treatment. Employee under medical treatment must provide certification from his/her attending physician on his/her medical status and duration he/she shall be on medical leave. Sick leave donation requests must be approved, in writing, in advance by the Executive Director or his designee, prior to the transfer of sick leave and subject to the following:

- (1) An employee donating his/her accrued sick leave does so voluntarily and without compensation or sick leave replacement;
- (2) The employee requesting donation must provide certification that he/she is undergoing medical treatment and the number of days he/she is expected to be on medical leave;
- (3) The employee receiving a sick leave donation has exhausted all his annual leave, sick leave, and accrued comp-time hours;
- (4) The employee receiving a sick leave donation shall not accrue any other leave while on medical leave status;

(b) Any CPA employee may also donate accrued sick leave to non-CPA CNMI government employees subject to the CNMI Sick Leave Bank Regulations [NMIAC, title 10, chapter 50] being administered by the Office of the Personnel Management.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-40-420 Leave of Absence

An employee may request for leave of absence without pay. Requests for such leave must specify its purpose and time period and must be authorized, in writing, by the Executive Director prior to its commencement. Because of the difficulties presented the organization by granting such leave, approval will not be given in ordinary course.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-425 Holidays

CPA shall observe those holidays observed by the government of the Northern Mariana Islands.

(a) Employees shall be paid holiday pay for work performed on Commonwealth legal holidays, in accordance with the regulations set forth herein.

(b) Payment for Work on Holidays. An employee required to work on a legal holiday shall be compensated at two times the base salary rate or the adjusted base salary rate. Holiday pay for hours of work performed on a legal holiday will not be paid any employee who is being paid a standby differential for those same hours.

(c) Holiday Pay in a Non-standard Workweek. When a holiday fall on a regular non-work day for employees whose basic workweek is other than the standard workweek, the workday immediately preceding or succeeding the holiday shall be designated (as determined by the Executive Director) as the holiday in lieu of such holiday that occurs on the employee's scheduled non-work day:

(1) Such employees who have designated holidays in lieu of the official holiday shall, if possible, be excused from duty on the designated holiday.

(2) Such employees who are required to work on their designated holidays shall receive two times the basic salary rate for work performed on that day.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-430 Maternity Leave

(a) A female employee may be granted maternity leave, not to exceed fifteen work days, because of confinement for childbirth. The employee must request maternity leave at least one week prior to the day she expects to leave work.

(b) Accrued annual leave and sick leave may also be applied for during this period. If maternity leave, annual leave and sick leave are exhausted, the employee shall be considered to be on leave of absence without pay.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-40-435 Paternity Leave

A male employee may be granted a maximum two days' leave because of the birth of his child, which two days shall include the date of childbirth. The Executive Director shall have the authority to approve paternity leave requests.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-440 Death in the Immediate Family

(a) An employee who suffers a death in his or her immediate family will be given a maximum of five days leave with pay.

(b) Immediate family shall be defined as including the employee's parent (including step or adoptive), spouse, sibling (including step or half), child (including step or adopted) or children-in-law, grandparents, mother-in-law and father-in-law (including step or adoptive).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-40-445 Election Day Leave

An employee will be given two hours off work with pay to vote on each official Election Day. The determination of which two hours of the day shall be taken off will be made by the employee's supervisor, so as to assure adequate staffing of the employee's office at all times.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-450 Administrative Leave

An absence from duty administratively authorized, without loss of pay and without charge to accrued leave, is administrative leave. The Executive Director, or his designee in his absence, has the responsibility for approving administrative leave requests. The following are the four general classes into which administrative leaves fall:

(a) Administrative leave is absence authorized under emergency conditions beyond the control of management, e.g., typhoons, or for participation in civic activities of interest to the government or CPA, or employment connected examinations, or for such reasons as the Executive Director may determine (such as a shortened work day on Christmas Eve or New Year's Eve).

(b) Extended absence required for medical appointments and care following job-related injuries may be authorized as administrative leave.

(c) Administrative leaves related to disciplinary actions. Managers may place an employee in nonworking status with pay for up to three work days pending preparation of a notice of proposed suspension for up to thirty calendar days or termination from employment.

(d) Administrative leave may be granted to employees serving on government boards and commissions, provided such employee does not receive compensation from the boards and commissions. Advance written notice by the head of a board or commission must be delivered to the department or agency head before an employee can be released from official duties to attend a meeting. If an emergency meeting is necessary, the Chairman or Executive Director may be notified by the department agency head by phone, but a written confirmation of the meeting must follow such oral notification.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-455 Military Leave

Military leaves of absence with pay, not to exceed fifteen working days in any calendar year, regardless of the number of training periods in the year, may be granted by the Executive Director to employees who are members of the United States National Guard and Reserve components of the United States Armed Forces, when directed under orders issued by proper military authority.

Modified, 1 CMC § 3806(e).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-460 Court Leave

Employees who are called upon to serve as jurors may, at their option, be granted court leave for such period as the jury may be impaneled. Employees who are called to jury duty shall present their juror summons to their immediate supervisor together with a completed request for leave, for the supervisor's signature and processing. Employees who serve as juror using court leave to cover the period of absence shall turn over to the Commonwealth Treasurer such jury fees (as distinct from expense allowances) as they receive from the court. Expense allowances paid the employee for whatever purpose may be retained by employee to defray the expenses for which granted. An employee subpoenaed as witness, except as a government witness, shall charge such absence to annual leave or leave without pay. Court leave shall be granted to an employee subpoenaed in litigation in which the government has no interest, to serve as a witness in the employee's present or past official capacity as a government employee and who may

be required to present government records in testimony. Such employee must inform the Executive Director of the required testimony as soon as possible after being subpoenaed.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-465 Leaves Without Pay

(a)(1) An employee on permanent status may be granted leave without pay not to exceed ninety consecutive workdays if the Executive Director considers it justified. Leave without pay may be extended up to ninety additional consecutive work days ONLY with the approval of the Executive Director. Such leave without pay may be granted to permit the employee to attend to important family affairs, such as settling an estate or for justifiable personal or business reasons.

(2) An employee desiring extended leave without pay shall prepare a memorandum of explanation addressed to the Executive Director explaining in detail the reasons for the request.

(b) Training and Education Leave.

Employees on permanent status, who wish to pursue their education on a full-time basis, without financial assistance by the government, may be granted leaves of absence without pay for a period not to exceed one year. Such employees shall have the right to return to their positions at the satisfactory conclusion of their education or training, and their service anniversary dates shall be adjusted by the amount of leave without pay taken. The Executive Director is responsible for approving or disapproving requests for training and education leave.

(c) Leave Without Pay in Extension of Annual or Sick Leave.

Employees on permanent status may be granted leave without pay (LWOP) for the purpose of extending annual or sick leave. When sick leave is so extended, the attending physician must certify to the necessity of the extension. The Executive Director is responsible for approving or disapproving requests for leave without pay.

(d) FMLA Leave.

(1) The Federal Family and Medical Leave Act of 1993 (FMLA) entitles employees who have worked for the Commonwealth for at least one year and who worked at least 1,250 hours over the previous 12 months to take up to 12 weeks of leave without pay for any of the following reasons:

(i) To care for the employee's child after birth or placement for adoption or foster care;

(ii) To care for the employee's spouse, son or daughter, or parent, who has a serious health condition; or

(iii) For a serious health condition that makes the employee unable to perform the employee's job.

(2) If an employee intends to take leave, the employee shall provide the Executive Director with at least 30 days' written notice and shall provide the Executive Director a copy of a medical certification to support a request for medical leave. In the case of medical emergency or unforeseeable event, then employee only has to provide the Executive Director with such notice as is practicable under the facts and circumstances of the particular case.

(3) At the option of the employee, annual leave, sick leave, maternity leave, or paternity leave may be substituted for LWOP for FMLA purposes. All leave qualifying under the FMLA shall be documented as FMLA leave either before it is taken or promptly thereafter.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsections (a) and (d) were not designated. The Commission designated subsections (a)(1) and (a)(2) and (d)(1) through (d)(3).

The 2002 notice of adoption changed the proposed language of subsection (d)(2). See 24 Com. Reg. at 19409 (July 29, 2002).

§ 40-40-470 Medical and Life Insurance

(a) An employee shall be entitled to participate in the group life and hospital insurance programs which are available to employees of the government of the Northern Mariana Islands on the same terms and conditions as are available to employees of the government for as long as such participation is permitted by the government or its insurer.

(b) An employee is entitled to participate in the medical insurance program which is available to CPA employees, on the same terms and conditions as are available to CPA employees.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

Part 500 - Drug and Alcohol Policy

§ 40-40-501 Purposes

(a) The Commonwealth Ports Authority (CPA) recognizes its commitment to employees, customers and the public, and wishes to take reasonable steps to assure safety in the workplace and the safety of the community. CPA is aware of the adverse effect alcohol and substance abuse have on safety and productive job performance. It recognizes that employees are affected in their ability to perform their jobs safely and productively, due to physical and emotional problems caused by the use or abuse of alcohol and other drug substances, which jeopardizes the integrity of the workplace and the achievement of CPA's mission.

(b) This policy establishes programs and practices that promote and support a drug-free working environment and comply with the Drug Free Workplace Act of 1988.

Modified, 1 CMC § 3806(g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

In subsection (b), the Commission changed “promotes and supports” and “complies” to “promote and support” and “comply” to correct a manifest error.

This section was originally an introductory provision to former section 6 (now part 500). See 24 Com. Reg. at 18958 (Jan. 29, 2002).

§ 40-40-505 Overview

(a) Employees have the responsibility for managing their individual behavior, and, if an impairment issue exists, the employee must successfully resolve that issue. Being fit for work addresses two matters - an employee's condition and his/her conduct.

(1) Condition. When an employee's condition (physical illness, emotional distress, and chemical dependency) interferes with safe and productive work, the employee needs to take measures necessary to correct the condition. CPA recognizes the valuable resource we have in our employees, and is committed to helping them maintain their health and well-being. Therefore, CPA strongly encourages employees to take advantage of the many opportunities of assistance through the employee health benefit programs to help them make a positive, healthy and mutually beneficial opportunity (see § 40-40-565).

(2) Conduct. The second aspect of being fit for work involves conduct. Employees are accountable for unsafe and unproductive work, and the consequences of their work. Irresponsible behavior that is unproductive and unsafe will not be tolerated, and an employee engaging in misconduct may be disciplined, including termination from employment (see § 40-40-520).

(b) CPA recognizes the need for safety, efficiency and productivity in employment. Therefore, it is the official policy of CPA that the:

- use · distribution · sale
- possession · manufacture · transfer
- or being under the influence

of alcohol in any form, and of illegal drugs and unauthorized substances in any detectable amount on CPA property or while on duty by employees, independent contractors or their employees is strictly prohibited (see § 40-40-520).

(c) CPA employees who violate the prohibitions of this policy will be subject to disciplinary action, including termination. An employee's refusal to submit to testing requirements will be treated as an act of insubordination (see § 40-40-520).

(d) Independent contractors and their employees who violate the prohibitions of this policy may be subject to contract cancellation (see § 40-40-515).

(e) All employees shall be subject to drug/alcohol testing, when applicable, to include the following categories: pre-employment, reasonable suspicion, post accident/incident, random, return to duty, and follow-up (see § 40-40-545).

(f) Employee education and supervisory training are essential parts of this policy and program. All existing and new employees will receive information on the impact of drug and alcohol use in the workplace, and will receive information on resources for help and assistance. No supervisor may make a reasonable suspicion or post accident/incident decision unless he/she has completed supervisory training relating to this policy (see § 40-40-535).

(g) Drug/alcohol testing will be conducted with accuracy and reliability. CPA upholds a high regard for privacy and dignity in specimen collection, testing and notification process. Employees found with the presence of a covered substance in the body, breath alcohol at a detectable level of 0.02 BAC or greater, or a confirmed positive drug urine test, without adequate medical explanation, will be regarded to have violated the provisions of this policy.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) through (g).

This section was originally an introductory provision to former section 6 (now part 500). See 24 Com. Reg. at 18959-60 (Jan. 29, 2002).

§ 40-40-510 Procedures; Definitions

For purposes of this part, the following definitions shall apply:

(a)(1) Accident means occurrence that results in:

- (i) The death of a human being; or
 - (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
 - (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the vehicle to be transported away from the scene by a tow truck or other vehicle.
- (2) The injury to a person on the job must require outside medical attention, and the physical damage or economic loss must be greater than \$1,000.
- (3) The occurrence must be reported to the CPA under applicable regulations.

(b) Alcohol concentration means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test. When the indicated alcohol concentration on an initial alcohol test is different from an indicated alcohol concentration on a confirmatory test, the employee shall be considered to have the lower indicated concentration.

(c) Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl or isopropyl alcohol.

(d) Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

(e) Canceled test (drug) means a test that has been declared invalid. It is neither a positive nor a negative test. This term includes a specimen which is rejected for testing by a laboratory. Further testing is required for pre-employment and return to duty testing.

(f) Conducting CPA business means being in a situation where decisions are made that commit CPA to some action, or being in a position where actions could injure or adversely affect other individuals or CPA.

(g) Confirmatory test (alcohol) means a second test following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.

(h) Confirmatory test (controlled substances) means a second analytical procedure to identify the presence of a specific drug or metabolite that is independent of the screen test, and that uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy.

(i) Consulting physician means a licensed physician retained by CPA to advise on drug testing and other industrial medicine issues.

- (j) Contractor means a person or organization that provides service to or works for CPA.
- (k) Covered substances mean:
- (1) Legally obtained drugs (prescription and non prescription remedies) when used according to directions to alleviate a specific condition.
 - (2) Illegal drugs, including:
 - (i) Drugs which are not legally obtainable;
 - (ii) Drugs which are legally obtainable, but have not been obtained legally;
 - (iii) Drugs which are legally obtained, but are knowingly used for other than the prescribed purpose or in other than the prescribed manner; and
 - (iv) So-called “designer drugs” or drug substances not approved for medical or other use by the State Board of Pharmacy, the U.S. Drug Enforcement Administration, or the U.S. Food and Drug Administration;
 - (v) Unauthorized substances including any substance that is intentionally used to cause impairment of physical and/or mental functioning;
 - (vi) CPA-covered substances are those substances that will be tested when called for by CPA, specifically:
 - (A) Marijuana (cannabinoids) and metabolites;
 - (B) Cocaine and metabolites;
 - (C) Amphetamines and metabolites;
 - (D) Opiates (narcotics);
 - (E) PCP (Phencyclidine); and
 - (F) Alcohol (ethyl alcohol).
- (l) CPA means the Commonwealth Ports Authority.
- (m) Drug/alcohol coordinator means the Executive Director’s representative who is in charge of the CPA drug and alcohol program (i.e., testing, training and documentation).
- (n) Drug use means the consumption of any substance (legal or illicit) that may cause an interference with the capacity to perform safe and/or productive work.
- (o) Executive Director means the Executive Director of the Commonwealth Ports Authority.
- (p) Medical review officer means a licensed physician responsible for receiving laboratory results generated by CPA’s drug testing program, who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual’s confirmed positive test result together with his or her medical history and any other relevant biomedical information.
- (q) Proof of wellness means a notice from the treatment specialist or substance abuse professional indicating the applicant/employee is no longer dependent on some drug/alcohol substance to the extent it can affect safe and productive work.

- (r) Refusal to submit means:
- (1) A verbal declination after being given a clear and specific order to submit to urine and/or breath testing.
 - (2) That an employee fails to provide adequate breath for testing or the non-production of a urine specimen without a valid medical explanation after he/she has received notice of the requirement to be tested.
 - (3) An employee engages in conduct that clearly obstructs the collection process.

(s) SAMHSA means the Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services.

(t) Screening test (alcohol) means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his/her system.

(u) Substance abuse professional (SAP) means a licensed physician (medical doctor or doctor of osteopathy), licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the national Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

(v)(1) Under the influence means that a covered substance is present in the body and is detected by breath alcohol testing (0.02 BAC or greater) or urine drug testing (a confirmed positive).

(2) NOTE: For the purposes of this policy, 0.02 BAC is established as the lowest conclusive detectable level in breath alcohol testing; however, noting breath odor is conclusive to remove an employee from service.

(w) Safety-sensitive function means performing work involving flight service, ports police, aircraft rescue and fire fighting, vessel traffic controllers, administrative assistants, and supervisory positions.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsections (a) and (v) were not designated. The Commission designated subsections (a)(1) through (a)(3) and (v)(1) and (v)(2).

In subsections (k)(2)(iv) and (k)(2)(v), the Commission replaced the final periods with semi-colons to make the punctuation consistent. In subsection (p), the Commission changed “physical” to “physician” and in subsection (u), the Commission changed “licenses” to “licensed” to correct manifest errors.

§ 40-40-515 Application

(a) Commonwealth Ports Authority (CPA) Employees:

(1) This policy shall apply to all CPA employees, while on CPA-owned or leased property or while off-premises conducting CPA business; and

(2) This includes off-premises activities during lunch break or other break periods where the employee is scheduled to return to work, or is on-call status or pre-shift periods.

(b) Independent Contractor, Vendor, Employees and Visitors. Visitors, independent contractor, their employees, and vendor employees are expected to be free from the effects of drug or alcohol use/abuse while conducting business for CPA or on CPA premises. As a consequence, contractor or vendor employees or visitors found to be violating this policy will not be allowed to continue to conduct business and their supervisor, if appropriate, will be notified.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-520 Prohibited Conduct

(a) Refusal to Submit to a Drug/Alcohol Test.

(1) Any employee refusing to comply with a request for a drug/alcohol test, shall be guilty of insubordination and shall be subjected to suspension or termination from employment.

(2) Any employee leaving the scene of an accident before a testing decision is made will be regarded as refusing to be tested.

(3) Any employee consuming alcohol after an accident and before a testing decision is made will be regarded as refusing to be tested.

(4) Any conduct that clearly obstructs the collection process will be regarded as grounds for termination.

(5) Refusing to submit to testing after receiving clear and specific instruction to be tested.

(6) Failing to timely provide an adequate specimen for testing, without a valid medical explanation, after receiving clear and specific instruction to be tested. An M.R.O. or consulting physician shall determine if there is any medical reason for failure to provide an adequate urine sample* (shy bladder) or an adequate breath sample (shy lung).

(7) Failure to provide an adequate urine sample for testing within two hours after arrival at the testing site.

(8) Failing to report to the specimen collection site timely after being informed of the requirement to be tested (once employee is instructed, employee must report directly to the collection site and must submit urine sample).

*So in original; probably should be "sample."

(b) Providing False Information and/or Attempting to Contaminate or Alter a Urine Specimen. Any employee providing false information about a urine specimen and/or attempting to contaminate a urine specimen will be subject to termination from employment.

(c) Refusal or Failure to Comply with Treatment Recommendations. Any employee refusing or failing to comply with treatment and after-care recommendations will be subject to suspension or termination from employment.

(d) Testing Positive for Prohibited Drugs, Alcohol and Unauthorized Substances on a First Test. An employee with a first confirmed positive drug/alcohol test result which has been verified as a “positive” result by a medical review officer will be suspended for not less than twenty working days, and thereafter, immediately be placed on leave without pay (LWOP) status until he/she successfully completes an approved drug or alcohol rehabilitation program. In addition, the employee will be demoted permanently in rank and pay of not less than two steps. If an employee holds any safety sensitive function, employee will be automatically terminated from employment.

(e) Testing Positive for Prohibited Drugs, Alcohol and Unauthorized Substances on a Second Occasion.

(1) Should an employee be retained or be re-employed following an initial positive test and then test positive for a prohibited drug, alcohol or unauthorized substance on a second or subsequent occasion, and within five years of a prior positive drug/alcohol test, the employee will be subject to termination.

(2) Employee undergoing drug rehabilitation program, or terminated from employment, shall surrender his/her valid government driver’s license to operate government vehicles, as well as his/her airport or seaport badges to the Executive Director.

(3) Employee testing positive will be ineligible for employment benefits, such as nomination for employee incentive awards, annual increments, merit increases, off-island seminars or training, and promotional opportunities for a period of not less than two years after the date of completion of the required rehabilitation program.

(f) Sale, Transfer, Possession with Intent to Deliver. Any employee engaging in the sale or attempted sale, purchase or transfer, or possession with intent to deliver illegal drugs, unauthorized substances or alcohol on CPA property, in CPA vehicles or equipment or while on CPA business will be terminated. Law enforcement authorities will be notified.

(g) Possession. Any employee found in possession of any amount of illegal drugs, unauthorized substances or alcohol (open container) in CPA vehicles or while conducting CPA business will be disciplined, and shall be subject to suspension or termination. Law enforcement authorities may be notified.

(h) Use or Under the Influence.

(1) Any employee found using or reasonably believed to be under the influence of an illegal drug, alcohol or unauthorized substance at work or reporting to work with the intention of work shall not be allowed to perform their job while in that condition, and will be subject to drug/alcohol testing.

(2) Admission of Using Controlled Substance after Testing. If an employee voluntarily admits to his/her supervisor/manager of illegally using controlled substance after the drug testing was performed and the drug result is determined to be negative, the employee will still be considered to be a user and shall be treated as having a confirmed positive testing in accordance with subsection (d).

(i) Pre-duty Use - Alcohol.

(1) General. No employee shall report to work if they have used alcohol within four hours of reporting to work. No employee shall report to work with any detectable levels of alcohol in their system.

(2) On-call Employees. No employee who is on a designated on-call status shall consume alcohol during the period of his or her on-call status. Employees in an on-call status shall inform the supervisor of any inability to perform safety-sensitive functions before commencing work.

(3) Any employee, prior to reporting to work, that acknowledges the use of alcohol during an on-call status may be subject to disciplinary action and will be referred to CPA EAP program for assessment.

(4) Any employee reporting to work having consumed alcohol during on-call status and failing to notify their supervisor will be regarded as being under the influence. Such employee will be tested and subject to disciplinary action for failure to report and other discipline according to subsections (d) and (g).

(5) Any employee, who acknowledges use during an on-call status, but claims ability to perform his/her safety-sensitive function, will be required to take an alcohol test before performing work. If the alcohol test is 0.02 or above, the employee will be subject to disciplinary action according to subsections (d) and (g). If the alcohol test is below 0.02, the employee will be subject to subsection (h)(2).

(j) Failure to Notify CPA of Criminal Drug Conviction. Employees are required to notify CPA of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction. Failure to do so within five days of conviction will result in termination (U.S. Drug Free Workplace Act of 1988).

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

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsections (e) and (h) were not designated. The Commission designated subsections (e)(1) through (e)(3) and (h)(1) and (h)(2).

The references to § 40-40-520(g) may be erroneous. Reference to § 40-40-520(h) would make more sense.

Subsection (i)(5) referenced former “procedure 3.8.2.1.” See 24 Com. Reg. at 18967 (Jan. 29, 2002). This provision did not exist, and the Commission changed the reference to former subsection 6.3.8.1 (now § 40-40-520(h)(2)).

§ 40-40-525 Use of Legally Obtained Drugs

(a) Protection from Work. Employees adversely affected by virtue of their use of any legally obtained drugs (prescription or non-prescription) cannot be allowed to perform a safety-sensitive job in such a condition.

(b) Notification Required. Prior to commencing work, each employee must report immediately to their supervisor/manager the use of any prescription or non-prescription drug which may affect driving performance or contains a cautionary label regarding the operation of equipment or vehicles. Employees taking medication with cautionary labels will provide proper medical authorization to work from a physician. Employees failing to report use of any prescription or non-prescription drug affecting work will be subject to disciplinary action up to and including termination.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-530 Policy Communication

(a) Current Employees. All current employees will receive a copy of the drug and alcohol policy. In addition, the policy will be posted.

(b) New Employees. All new employees hired after the effective date of the policy will be given a copy of the CPA drug and alcohol policy as a part of new employee orientation. New employees will acknowledge they have read the policy and such acknowledgment will be noted by signature in employee’s personnel files.

(c) Defined, CPA Employees. All employees transferring into or new employees being assigned to CPA will be notified of the specific requirement for drug/alcohol testing.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-535 Training

(a) Current Employees. All employees will receive information and training on:

(1) Effects and consequences of drug and alcohol use on personal health, safety, and the work environment.

(2) Manifestations and behavioral clues indicative of drug and alcohol use and abuse.

(b) Supervisors/Manager. All supervisor/managers who are authorized to make reasonable suspicion determinations will receive training that meets or exceeds CPA standards for training on the physical, behavioral and performance indicators of probable drug and alcohol use.

(c) New Hires and New Supervisors.

(1) All newly hired employees will participate in an alcohol and other drug abuse policy and drug awareness session.

(2) All newly promoted supervisors will not make reasonable suspicion determinations until they participate in a supervisory training process to acquaint them with the physical, behavioral and performance indicators of probable drug use.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-540 Role of the Medical Review Officer (MRO) and Consulting Physician

(a) Duties.

(1) Recipient of Drug Testing Results.

(i) The MRO will be the sole recipient of SAMHSA drug testing results from the laboratory and positive results of all non-SAMHSA drug-testing results. After verification of positive or negative result and the applicant/employee has been consulted by the MRO, the MRO will contact the CPA drug and alcohol coordinator and inform him/her of the positive or negative result.

(ii) NOTE: The MRO shall immediately contact the CPA drug and alcohol coordinator should the employee be a ports police officer or a fire fighter so the individual will be temporarily placed in a non-safety sensitive job status until the verification process of the result has been completed.

(2) Verification of Positives: The MRO will verify that the laboratory report of a positive result is reasonable. The MRO, if necessary:

(i) When requested by the applicant/employee, will review the individual's medical history, including any medical records and biomedical information provided.

(ii) When requested by the applicant/employee, will afford the individual an opportunity to discuss the test results with the MRO or a local designated consulting physician.

(iii) Will determine whether there is a legitimate medical explanation for the result, including legally prescribed medication.

(iv) Will request, as needed, pertinent analytical records or require re-analysis of any specimen to verify results.

(v) Will determine that there is clinical evidence, in addition to the urine test, of unauthorized use of any opium, opiate, or opium derivative if the laboratory does not confirm the presence of 6-monoacetylmorphine.

(3) Post-accident Specimen Collection Facilitation. The MRO or local consulting physician, when requested, will assist in facilitating the collection of specimens related to an accident event.

(4) Fit for Work Consultation. The MRO or local consulting physician will, when requested, be available for consultation to determine the ability of an employee to report to work or continue work when under the influence of over-the-counter medication and/or prescription medication.

(5) Return to Work Consultation. The MRO or local consulting physician will, when requested, review the records and examine, when appropriate, all employees returning to duty after having refused to take a drug/alcohol test. The MRO will consult with treatment counselors, and the CPA staff when making the evaluation.

(b) Release of Results. Test results will be released only under the following circumstances:

(1) The MRO will report all positive test results (after review) and all positive and negative SAMHSA test results to CPA's Executive Director and drug and alcohol coordinator.

(2) The MRO may release the results to a third party only when the person tested signs an authorization for the release to an identified person.

(3) The MRO may release the results of a drug/alcohol test to the person who was tested to the Executive Director and drug and alcohol coordinator.

(c) Reporting. The MRO will only report to CPA's Executive Director and/or CPA's drug and alcohol coordinator.

(d) Relationships.

(1) Testing Laboratories. The MRO will be the primary contact for technical inquiries to the testing laboratory.

(2) Treatment and Rehabilitation Facilities. The MRO and the drug coordinator will have direct contact with substance abuse professionals regarding drug positives.

(3) Employee Assistance Counselors. The MRO will, if appropriate, confer with any employee assistance counselor when evaluating a return to duty status.

(e) Reports.

(1) The MRO will retain records for five years of reports of individuals who do not pass a drug/alcohol test. Reports of individuals who do pass a drug/alcohol test will be retained for one year. Records related to the collection process will be retained for two years.

(2) The MRO will provide CPA the necessary information for the preparation of federal reports.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsection (a)(1) were not designated. The Commission designated subsections (a)(1)(i) and (a)(1)(ii).

§ 40-40-545 Referral for Testing

(a) Pre-employment Testing.

(1)(i) All offers of CPA employment are contingent upon the applicant successfully passing a drug test. No applicant will be assigned to work until they have passed a urine drug test. Drug testing will be at applicant's own expense.

(ii) NOTE: Due to the non-availability of a drug testing facility in Rota and Tinian, selected applicant(s) for Rota and Tinian will be waived until during the next random drug testing is conducted at their location, then they will submit to a urine drug test as part of their employment.

(iii) Applicants selected for immediate employment and have not yet received their drug testing results will sign an employment agreement. If the drug test results show "positive," the employee will immediately be released from employment.

(iv) An employee must reimburse CPA for drug testing expense.

(2) Test Specimens. Urine - all applicants being hired will be subject to SAMHSA or a NIDA panel test for illegal and unauthorized substances.

(3) Notification of Testing Requirement. Applicants will be notified of the requirement to pass a drug test at the time of application.

(4) Canceled Test. When a pre-employment drug test is determined to be a canceled test by the MRO, the applicant will be required to immediately submit another urine specimen for testing.

(5) Reapplication After a Positive Test. Applicants who test positive without adequate explanation of the results will not be considered for employment for two years, during available announced positions, after which period they must present proof of wellness. Applicants must complete a waiting period of not less than two years after the date of release from their last employment, complete a drug rehabilitation program, not apply for any management or safety sensitive position, and must submit a statement of fitness for duty from the MRO or a certified physician/counselor and an agreement similar to a return to duty contract.

(6) Release of Statement of Any Drug Testing History. Applicants who were previously employed with CPA or with the CNMI government, and applicants who have had an offer for CPA employment withdrawn due to a previous positive urine test result, must provide CPA a written release of drug testing history for the two years immediately prior to the application date.

(b) Reasonable Suspicion Testing. All employees will be subject to drug/alcohol testing if there is reasonable suspicion to believe he/she may be under the influence of some drug or alcohol.

(1) Reasonable Suspicion Defined.

(i) Reasonable suspicion for drug/alcohol testing means specific contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the employee. In other words, a reasonable suspicion decision consists of specific facts, circumstances, physical evidence, physical signs and symptoms, or a pattern of

performance and/or behavior that would cause a trained supervisor to reasonably conclude an employee may have engaged in on the job drug or alcohol use, or may be under the influence of some drug/substance, including alcohol.

(ii) NOTE: An alcohol reasonable suspicion determination must be based on observations and facts related to an employee's condition and/or performance just before or while the employee is to perform or has performed work for CPA.

(2) Examples of reasonable suspicion include, but are not limited to:

(i) Unsatisfactory work performance, including accidents and incidents, adequately documented, and where some drug or alcohol related documentation indicates a linkage or a change in an employee's prior patterns of work performance, and where some drug or alcohol performance-related documentation indicates a linkage.

(ii) Physical symptoms consistent with substance abuse.

(iii) Evidence of illegal substance use, possession, sale or delivery.

(iv) Fights (to mean physical contact) and assaults, or erratic or violent behavior.

(3) Test Specimens.

(i) Breath - employees will be subject to the collection of a breath sample(s) to determine if current consumption of alcohol is present.

(ii) Urine - employees will be subject to a urine drug test for covered substances.

(4) Steps in Reasonable Suspicion Testing.

(i) Properly Trained Supervisor. Only a supervisor with government-approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make reasonable suspicion testing decisions.

(ii) Objective Inquiry. When reasonable suspicion exists, the affected employee will be questioned and observed. A decision to request a specimen will be based on eyewitness reports, facts of the event, and observed physical and behavioral characteristics of the affected employee. The employee will be interviewed in a private area.

(iii) Verification. All requests to an employee for a drug/alcohol test will be verified by another supervisor or manager who has received training in recognition of signs and symptoms of drug and alcohol abuse. Such verification may be done in person or telephonically.

(iv) Relief of Duty. The employee may be relieved of duty until the results of the drug and/or alcohol test are complete and verified.

(v) Transportation Assistance. The employee will be accompanied to the collection site by a supervisor or manager. The employee will be provided transportation home. If the employee refuses and demands to drive his/her vehicle, CPA shall notify law enforcement.

(vi) Report. The events of a request for a specimen will be reduced to writing and will be reviewed by CPA management.

(c) Post-accident Testing. All employees will be subject to drug/alcohol testing if an accident occurs meeting the definitions of either § 40-40-510(a), or (b), or (l).*

(1) Test Specimens.

(i) Breath - employees will be subject to the collection of a breath sample(s) to determine if current consumption of alcohol is present.

(ii) Urine - employees will be subject to a urine drug test.

- (iii) Blood - in accidents and incidents that cause severe* sample may be drawn for future testing if breath alcohol testing is not readily available.
- (2) Steps in Post-accident Testing.
- (i) Supervisor Training. Only a supervisor with approved training in the physical, behavioral, and performance indicators of probable drug and alcohol use is permitted to make post-accident testing decisions. Notify next level of supervisor of the incident.
- (ii) Objective Inquiry. A supervisor's decision to request testing shall be based on eyewitness reports, facts of the event, and observed physical and behavioral characteristics of the employee. Specifically, the properly trained supervisor shall require the driver of any government vehicle or the operator of any government equipment involved in the accident to be tested.
- (iii) Transportation Assistance. The employee shall be accompanied to the collection site by a supervisor or manager, and shall be provided transportation home from the collection site. If the individual refuses and demands to drive his/her vehicle, the supervisor or manager shall notify the police department. The physical health of the driver, responsible employee, or general public is always a higher priority than the collection of a drug and/or alcohol sample.
- (iv) Notify the Hospital of the Need for a Specimen. If the employee is injured and unable to consent to a urine sample, wait until the treating physician determines the employee is able to understand a request, sign the necessary forms, and provide a sample. If the employee is unconscious, ask the treating physician to collect a specimen. If the hospital takes a sample but refuses to release a specimen, ask them to retain it in their custody and freeze it with proper chain of custody procedures.
- (v) Duty Pending Test Results. Until the results of the drug and alcohol test are complete and verified, no employee reasonably suspected of having been under the influence of alcohol or drugs at the time of the accident shall be allowed to perform or continue to perform a safety-sensitive duty.
- (vi) Cooperate with Law Enforcement. Allow local law enforcement to conduct their investigation. The police may require a breath/alcohol test or blood specimen to be drawn for a legal determination of blood alcohol.
- (vii) Explain. Tell the employee that a drug and/or alcohol test is as much to protect him/her as it is to determine facts for CPA. Point out to the employee that a negative finding will objectively put to rest any suspicion of drug/alcohol involvement in the accident.
- (viii) Notify the MRO. Explain the circumstances of the accident. The MRO will telephonically assist in facilitating the specimen collection process.
- (ix) Collection Timing. The specimen should be collected as soon as possible after the accident.
- (x) Alcohol Collection. Alcohol testing must occur within two hours of the accident. If the collection occurs after two hours but within eight hours of the accident, a report must be filed with CPA for CPA-covered employees. After eight hours has elapsed, breath alcohol testing will be done at the discretion of CPA.
- (xi) Urine Collection. Urine collection must occur within thirty-two hours of the accident.
- (xii) Work with the Coroner in a Fatality Accident. If the accident results in an employee's death, an autopsy most likely will be performed. As soon as possible after

the accident, request in writing and in person that the medical examiner, coroner, or pathologist obtain a urine specimen of at least 100 milliliters to be placed into a specimen bottle and sealed according to directions.

(xiii) Collect Accident Documentation Promptly. Immediately following the accident, accident investigators, either employees or contracted individuals, should be used to accurately document critical information. Note the time and date of both the occurrence of the accident and specimen collection.

(3) The Supervisor Report. The supervisor ordering post-accident testing shall put in writing, in detail, the facts leading to the decision. This report shall be considered confidential and will be maintained in the employee's drug and alcohol test file, which is confidential, until needed for a disciplinary action.

(4) Relief of Duty. An employee may be returned-to-duty, at the supervisor's discretion, pending results from a post-accident/incident event if there is reasonable belief the employee was not under the influence at the time of the accident. If the employee has been medically examined, post-incident, he/she must receive a return to work clearance from CPA's MRO/consulting physician before returning to work.

*So in original; see the commission comment to this section.

(d) Return to Duty Testing (Re-entry to Work) and Follow Up Testing.

(1) Return to Duty Testing Criteria. An employee, having previously tested positive for drugs or alcohol, or voluntarily acknowledged being under the influence of drugs or alcohol while on duty, will be required to pass a drug/alcohol test before being returned to duty. Such employees will not be allowed to return to work until they:

(i) Test negative for the covered substances and are evaluated and released for duty by the medical review officer (if the prior incident was drug related); or

(ii) Test below a 0.02 alcohol concentration and are released by a substance abuse professional (if the prior incident was alcohol related).

(2) Follow-up Testing. An employee, requiring return to duty drug/alcohol testing, may be subject to unannounced drug/alcohol test for up to sixty months after returning to work. There shall be no fewer than six tests in the first 12 months of follow-up testing. The specific number will be recommended by the substance abuse professional. All return to duty and follow-up testing costs will be paid by the employee.

(3) Test Specimens.

(i) Breath - employees will be subject to the collection of a breath sample(s) to determine if current consumption of alcohol is present.

(ii) Urine - employees will be subject to a urine drug test for CPA-covered substances. Employees performing a safety-sensitive function will have two urine specimens (split specimen) collected for the covered substances test under the CPA rule.

(4) Canceled Test. When a return to duty drug test is determined to be a canceled test by the MRO, the employee will be required to immediately submit another urine specimen for testing.

(5) Compliance with Rules. The employee shall sign an agreement to comply with CPA rules, policies, and procedures relating to employment;

(6) Term. The term of the agreement shall be effective for five years after employee's return to duty; and

(7) Breach of Contract. The agreement shall state that any violation of the return to duty contract shall be grounds for termination.

(e) Random Testing.

(1) Random Testing Defined. Random testing means that drug tests are unannounced.

(2) Selection Rate. The selection rate will be no less than 25% for urine drug testing and 25% for breath alcohol testing.

(3) Selection. Using the lottery system, the Executive Director or the drug/alcohol coordinator shall randomly select employees for unannounced drug testing through a random lottery number table that is matched with the employee's social security number or payroll identification number. Each employee selected for testing will remain in the random testing pool to ensure equal chance of being selected for testing.

(4) Schedule of Testing. Random testing will be on a quarterly basis or at the discretion of the Executive Director and shall not be less than 25% of the employees selected.

(5) Notification of Employee. Employees, when notified of a random selection, shall cease work functions and immediately proceed to the collection site.

(i) If the selected individual is off-duty, he/she will be placed on the next quarterly selection process.

(ii) If the employee is notified and does not report for testing, he/she will be considered as testing "positive."

(6) A CPA employee shall only be tested for alcohol before, during, or just after performing his/her duty.

(f) Re-testing of a Split Specimen. If the drug test result of the primary urine specimen is verified positive, the employee performing a safety-sensitive function may request that the MRO direct the split specimen to be tested in a different DHHS-certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen. Such request must be in writing to the MRO and within seventy-two hours of the employee having been notified of the verified positive drug test result. Re-tests will be at the employee's expense.

(1) The employee will automatically be placed on leave without pay (LWOP) status for the duration of the re-testing procedure.

(2) Should the second test return and is verified by an MRO as a negative, the employee will be cleared, reimbursed of testing expenses, reinstated with back pay, and return back to regular duty.

(3) Should the second test return and is verified by an MRO as a positive, the employee will automatically be terminated if his/her position is a safety-sensitive function.

(4) The employee shall have the right to appeal the dismissal to the CPA Appeal Committee, in writing, within five working days after being notified of the second test.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsections (a)(1) and (b)(1) were not designated. The Commission designated subsections (a)(1)(i) through (a)(1)(iv) and (b)(1)(i) and (b)(1)(ii).

In subsection (a)(1)(iii), the Commission moved a comma inside of the closing quotation mark. In subsection (b)(3)(ii), the Commission inserted the word “for.” In the first sentence of subsection (c)(2)(xiii), the Commission changed a period to a comma to correct a manifest error. In subsection (e)(5)(ii), the Commission moved the final period inside of the closing quotation mark.

Subsection (c) originally referenced “1.1(1), (2), or (3), or 1.2, or 1.12(2), (3), (4).” Former section 6.1.1 (now § 40-40-510(a)) defines accident. The references to former section 6.1.2 (now § 40-40-510(b)) and 6.1.12 (now § 40-40-510(1)) are in error. References to the definitions of “alcohol concentration” and “CPA” do not make sense in this context.

§ 40-40-550 Specimen Collection

(a) Specimen Collection Sites. Urine and/or breath specimens will be collected at sites approved by CPA or a designated representative of CPA.

(b) Specimen Collection Persons. The only persons authorized to collect specimens are as follows:

- (1) Urine - Persons trained in the SAMHSA or NIDA collection process.
- (2) Breath - Persons (employees of CPA or the collection site) who have been trained as breath alcohol technicians in a CPA or CNMI government approved training program.
- (3) Blood - Persons authorized or certified by CNMI law to draw blood.

(c) Specimen Collection Protocol. Breath and urine specimens shall be collected strictly in accordance with established collection protocols, and shall strictly adhere to the collection requirements specified in 49 CFR Part 40, “Procedures for Transportation Workplace Drug and Alcohol Testing Programs.”

(d) Split Specimens. All urine collections for CPA-covered employees will be split into two specimens and shipped to the laboratory. One specimen, called the primary specimen, shall be tested for CPA. The other specimen, called the secondary specimen, shall be the property of the employee, to be tested only upon the request of the employee.

(1) Results. The laboratory conducting the urine test shall give the results only to the MRO. The MRO shall discuss the test result with the tested individual and then report the result to the CPA drug coordinator.

(2) Invalid Test. If the MRO decides that the test is invalid, the candidate shall immediately submit another urine specimen for testing.

(3) **Alternative Explanations for Positive Test Results.** Upon receiving a report of a positive test result, the MRO shall determine if there is any alternative medical explanation for the result, including the use of prescribed medication by the employee. Such a determination shall be based on information received from the employee such as the tested individual's medical history and records. If the MRO determines it to be necessary he/she may request pertinent analytical records from the laboratory or require a re-analysis of the specimen.

(4) The MRO shall report the urine test as negative and shall take no future action if he/she determines:

(i) There is a legitimate medical explanation for a positive test result, other than the use of the specific drug; or

(ii) Based on a review of laboratory inspections reports, quality assurance and quality control data, and other drugs test results, the positive drug test result is scientifically insufficient for further action.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: In subsection (d)(4)(ii), the Commission changed “base” to “based” to correct a manifest error.

§ 40-40-555 Laboratory Testing

(a) **Approved Laboratory Defined.** Only laboratories and laboratory systems approved for the testing of urine specimens by the U.S. Department of Health and Human Services, SAMHA, will be used.

(b) **Reports.** The laboratory will provide CPA with summary information on number of tests and results.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-560 Supervisor Responsibilities

(a) **Reasonable Suspicion and Post-accident Testing.** Supervisors and managers are expected to base testing requests on objective observations and to thoroughly document all steps.

(b) **Confidentiality.** Supervisors and managers will communicate information regarding a fit for work incident strictly on a need-to-know basis.

(c) **Accountability.** Supervisors and managers who knowingly disregard the requirements of this policy with respect to fit for work concerns will be regarded as neglecting their responsibilities, and may be disciplined up to and including termination.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-565 Employee Assistance and Rehabilitation

(a) **Intent.** CPA highly encourages employees who have personal problems to utilize the employee assistance program (EAP) before those problems affect their job performance. Employees who voluntarily seek assistance in dealing with emotional distress, personal health problems, or problems relating to alcohol or drug use before there is a performance issue, will be provided the same leave benefits as with any other health-related issue. Employees will be held accountable for acceptable job performance regardless of participation in or requests for referral to the EAP. In no case will disciplinary amnesty be granted to employees asking for assistance and referral.

(b) **Management Referrals.** Employees who are referred as a part of supervisory performance counseling or intervention are assured of confidentiality. Only those in the chain of responsibility and human resources may be aware of an EAP referral/treatment request.

(c) **Positive Test Referrals.** If an employee tests positive for the presence of alcohol or prohibited drugs and is retained as an employee, he/she shall be referred to CPA's EAP for assessment, and will be required to fulfill specified steps of treatment before being considered ready for evaluation for return to duty to any position at CPA. CPA employees may be allowed the opportunity for rehabilitation following a positive alcohol or drug test under the following conditions:

- (1) Voluntary self-referrals by the employee prior to any type of incident or accident.
- (2) Management intervention/referral prior to any incident or accident.
- (3) First time positive drug or alcohol test (unrelated to any incident or accident) for an employee not performing a safety-sensitive function while under the influence.

(d) **Return to Duty Evaluation.** No employee shall return to work after a positive test for alcohol (0.02 or above) or drugs (positive finding from the laboratory and/or MRO) until they have been evaluated and released for duty by the MRO (CPA-covered substances) and/or a substance abuse professional (CPA, non-CPA covered substances and alcohol).

(e) **Confidentiality and Conduct.** A direct request by the employee for assistance will be made a part of the employee's medical file. Any related performance issue or disciplinary action will be in the employee's personnel file.

(f) **Free of Discrimination.** Employees will not have job security or promotional opportunities jeopardized solely because of a request for help.

- (g) Re-entry to Work.
- (1) After Mandatory Referral. Employees re-entering the work force after a mandatory referral for a fit for work issue will agree to a re-entry contract. That contract may include, but is not limited to:
- (i) A release to work statement from an approved treatment specialist.
 - (ii) Evidence of a plan setting out after-care and follow-up treatment procedures with the assistance counselor or a treatment specialist and MRO/consulting physician for a minimum of six months. Longer periods of follow-up may be specified by the assistance counselor.
 - (iii) A review and release for work by a designated CPA representative and the MRO/consulting physician (for drug positives) or CPA's substance abuse professional (for alcohol positives).
 - (iv) A negative test for drugs, unauthorized substances and alcohol.
 - (v) An agreement to unannounced drug/alcohol testing (for up to five years).
 - (vi) A statement of expected compliance with CPA work rules, policies, and procedures.
 - (vii) Specific agreement by the employee that violation of the agreement will be grounds for termination.
- (2) After Voluntary Self-referral. Employees selfreferring to a substance abuse treatment program, with the prior knowledge of their supervisor or CPA's management, must agree to a re-entry contract. The contract will include:
- (i) A release to work statement from an approved treatment specialist.
 - (ii) An evaluation and release to work by a designated CPA representative.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: In subsection (c), the Commission changed "appositive" to "a positive," and in subsection (g)(2)(i), the Commission changed "form" to "from" to correct manifest errors.

§ 40-40-570 Confidentiality, Record Keeping, and Reports

- (a) Confidentiality.
- (1) Test Results. All test results will be regarded as medical data and will be stored in a separate location than the employee's general performance file. The status of an employee's drug/alcohol test will be communicated within CPA on a strict need-to-know basis.
- (2) Employee Assistance Referrals. Any knowledge of an employee's attendance at a substance abuse treatment program will be treated the same as medical data and will be filed in the employee's medical file. The status of an employee's involvement with employee assistance and/or substance abuse treatment will also be communicated within CPA on a strict need-to-know basis.

(b) Record Keeping.

(1) Test/Collection Records. Original test results will be maintained by the MRO. CPA will also maintain records received from the MRO regarding test results which will be stored in a secure location with controlled access. All records relating to the urine and alcohol collection process will be maintained by CPA, the MRO, and the collection site (if other than the MRO and/or on-site collection).

(2) Record Retention Schedule.

(i) Ten years - records relating the administration of the fit for work policy, including policy and program development, employee awareness and supervisory training, collection site training, and program administration.

(ii) Five years - records of positive drug and alcohol tests, refusals to take required drug/alcohol tests, calibration documentation, and referrals to the substance abuse professional.

(iii) Two years - records relating to the breath and urine collection process.

(iv) One year - records of negative drug and alcohol test results.

(c) CPA Reports. The drug coordinator will submit, to the Executive Director, an annual report summarizing the results of the anti-drug and alcohol misuse prevention program.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: In subsection (a)(2), the Commission changed “file din” to “filed in” to correct a manifest error. In subsection (b)(2)(iv), the Commission changed “rest” to “test.”

§ 40-40-575 Business Use of Alcohol

(a) Never a Business Obligation. The consumption of alcohol should never be considered a business obligation.

(b) Separation of Business and Business Entertainment. Employees will not consume beverages containing alcohol while conducting business. Conducting business can be defined as any event where the interests of CPA are being obligated and/or represented. Business entertainment can be defined as events where the primary purpose is friendship and socialization. When in doubt, the best advice is “don’t drink.” Lunch, with the expectation of returning to business or the workplace, would not be considered business entertainment.

(c) CPA-sponsored Social Events. Employees who consume alcohol-containing beverages at CPA-sponsored social events are highly encouraged not to drive after drinking.

Modified, 1 CMC § 3806(g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: In subsection (b), the Commission moved the period after “don’t drink” inside of the closing quotation mark.

Part 600 - Miscellaneous

§ 40-40-601 Rules Governing Conflict of Interest and Nepotism

(a) No person shall hold a job which a member of his/her immediate family exercises supervisory authority over.

(b) For purposes of this part, the phrase “immediate family” shall include those persons described in § 40-40-440.

Modified, 1 CMC § 3806(c).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs were not designated. The Commission designated subsections (a) and (b).

§ 40-40-605 Internal Operating Procedures

Internal office operating procedure shall be governed by the Executive Director. From time to time, written memoranda will be issued by the Executive Director. Policies and procedures so issued shall be followed.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-610 Promulgation of Personnel Policies and Procedures

All existing personnel and each new employee shall be advised of the existence of the personnel manual in this chapter and all memoranda governing internal operating procedures. This chapter and all internal operating memoranda shall be kept in a place in each office where all employees will have access to the same.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-615 Employee Incentive Program

(a) Objective. To motivate CPA employees, promote employee morale and increase productivity, an employee incentive program is hereby established.

(b) Introduction.

(1) The growth of CPA since it was established in 1976 has been phenomenal. Revenue has tripled within the last 10 years and the size of its workforce has doubled. Facilities have expanded by more than 100% due largely to the tourism industry. Major capital improvement projects are in progress. A multi-million dollar harbor improvement project has been completed, and many more are being planned for the future.

(2) As CPA produces positive results and continues to chart its course, recognition is made to employees who are responsible for CPA's significant accomplishments. After all, CPA employees are extremely important resource and responsible for executing our plans. Through its employee incentive program, it is CPA's intent to recognize deserving employees and continue to produce a multitude of positive results.

(c) Establishing an Employee Award Committee. An employee award committee shall oversee the program and make sure that actions and activities are directed in timely and non-discriminatory fashion. Additionally, the committee shall be responsible for developing the award program and make it comprehensive. The committee shall be comprised of supervisors including the Executive Director or Deputy Director and shall be no less than four members. Supervisors who do not serve in the committee may be appointed as alternates or to serve for the next term.

(d) Award Program.

Employee awards do not necessarily have to be conventional as we are accustomed to seeing in many organizations, i.e. employee of the quarter or year. Various recognition may be used in the program such as group/team awards, safety awards, best team player awards, or recognition tailored to the line of work involved, e.g., ARFF, security, terminal maintenance, and operations. Nevertheless, the award program should be developed within the scope of CPA objective which provides for a wide latitude of recognition yet cognizant of applicable rules and regulations. It is the intent of management, however, to present this basic award program to the supervisors for comments and make changes, as warranted, prior to proceeding towards final draft form.

(1) BRONZE AWARD - for most improved in attendance and promptness. Employees who are punctual and have perfect attendance for a specific month shall be recognized. Each supervisor shall review attendance records of employees at the end of each month and report to the committee. Two or more employees from one department may receive this award.

(i) Possible awards may include a letter of commendation, a certificate signed by the Executive Director and Deputy Director, monetary gift, publicity or a combination thereof. The committee shall determine the amount and identify the source of funds.

(ii) The bronze award recognizes improved attendance, promptness and helps CPA avoid paying for overtime hours of employees covering shifts of absent personnel. Overall, it will encourage employees to report to work as scheduled and perform as expected.

(2) SILVER AWARD - employee of the quarter. At the end of each quarter, the supervisors shall evaluate the job performance of each employee using CPA's rating sheet. The committee shall review the rating of each candidate from every department and make a recommendation to the Executive Director as to which candidate deserves the award using a ranking system - from candidate No. 1, candidate No. 2...candidate No. 8 and so on. The committee's recommendation shall include complete justification in writing in a format acceptable to the Executive Director.

(i) Types of awards may include monetary gift, certificates, or time off (for example, 2 days off via a administrative leave), publicity or a combination thereof.

(ii) The silver award is intended to serve as recognition of the employees' superior work performance and provide opportunities for average performers to improve during the remainder of the year. These quarterly evaluations may also serve as the basis of assisting in the employees' year-end performance, as explained below.

(3) GOLD AWARD - employee of the year. This award is the ultimate goal of every high performer. Using CPA's rating sheet and the quarterly evaluations, each supervisor nominates one candidate from his or her department for "outstanding performance" throughout the year. The committee shall review the nominations and recommend the best candidate to the Executive Director for the award. A complete justification shall be submitted with the recommendation.

(i) Types of awards may include monetary gift, a certificate of recognition, administrative or educational leave to attend NMC classes (for example, 80 hours off over one-year period), publicity or a combination thereof.

(ii) The gold award will facilitate year-end performance evaluations and assist CPA supervisors in determining whether an employee deserves an annual increment, merit increase, or both.

(e) Summary.

(1) The incentive award program is intended to serve dual purposes. First, it would encourage employees to perform better and increase productivity. The program will help CPA recognize deserving employees and simultaneously improve employees' work performance. Second, the evaluation process will assist CPA supervisors in identifying problem areas in their early stages and make improvements accordingly for the remainder of the year.

(2) The awards stated herein are traditional and may be augmented or improved. Comments or suggestions from the supervisors are solicited. Their input is crucial in making the program successful, practicable and simple. The supervisors and committee members shall be ultimately responsible for improving the program to better serve CPA.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The original paragraphs of subsections (b), (d)(1), (d)(2), (d)(3) and (e) were not designated. The Commission designated subsections (b)(1) and (b)(2), (d)(1)(i) and (d)(1)(ii), (d)(2)(i) and (d)(2)(ii), (d)(3)(i) and (d)(3)(ii) and (e)(1) and (e)(2).

In subsection (d)(1)(ii), the Commission changed “help” to “helps” to correct a manifest error.

Part 700 - Ethics Policy Guidelines for CPA Board Members, Management and Staff

§ 40-40-701 Purpose of Ethics Policy Guidelines

(a) Most jurisdictions have statutes that prohibit board members and management employees from using their public offices for private gain. These statutes are sometimes criminal or quasi-criminal in nature.

(b) Many ethics infractions deal with the misuse of agency equipment such as vehicles, computers and telephones. Other ethics infractions deal with inappropriate expense reimbursement.

(c) CPA Board members and its Executive Director should always strive to avoid any improper act or conduct, including the appearance of impropriety.

Modified, 1 CMC § 3806(g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: In subsection (a), the Commission corrected the spelling of “statutes.”

§ 40-40-705 Conflict of Interest and Impartiality

(a) The CPA Board members and CPA management staff should always act fairly, should be non-partisan and should be unbiased when carrying out their duties and responsibilities.

(b) The goal of all CPA agency decisions is to further the best interest of the public. CPA Board members and management employees should not have any conflict or potential conflict of interest in any matter requiring board action or management decision.

(c) CPA Board members and management staff should always avoid any improper act or conduct, including the appearance of impropriety.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-710 Recusal Due to Conflict

(a) A Board member should not neglect his/her duties and responsibilities as a Board member, including regular attendance at meetings, being prepared, and carrying out of committee assignments.

(b) A Board member should not participate in board decisions in which he/she will realize any direct or indirect financial or non-financial benefit. A Board member shall not participate in matters in which his/her personal interest would compromise his/her objectivity or where the appearance of bias would compromise his/her impartiality in a matter requiring board action or approval.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-715 Public Communications

(a) A Board member may not speak or act on behalf of the Board without proper authorization. He/she may, however, voice his/her opinion on a matter before the Board.

(b) CPA management staff should obtain authorization from the Board or the Executive Director before transmitting any official, public communication to the general public or to the news media.

(c) The Executive Director and the Board Chairperson shall coordinate the matter of press releases and official public communications issued by CPA.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-720 Board Member Conduct

(a) CPA Board members and management staff shall conduct themselves in a manner that promotes the integrity of CPA, the Board and management, and CPA's decision-making processes.

(b) CPA Board members shall recognize the responsibility of all board members to promote the public interest in its decision-making process.

Modified, 1 CMC § 3806(g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: In subsection (b), the Commission inserted “the” before “responsibility” to correct a manifest error.

§ 40-40-725 Policy-making Role of the Board

(a) A Board member shall not be involved in the day-to-day management and personnel matters of CPA, unless required by law, the CPA by-laws, rule or policy.

(b) The Board shall make policy decisions; the Executive Director and management staff shall implement the policies and decisions of the Board.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-730 Matters of Confidentiality

(a) CPA Board members and management staff shall always maintain the confidentiality of documents and information that are confidential by nature or law.

(b) CPA Board members and management staff shall protect the confidentiality of CPA matters that are confidential in nature or at law, or matters which are still being considered by the Board, prior to Board decision, action or approval.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-735 Disclosure of Conflict of Interest

(a) Board members shall disclose all actual or potential conflicts of interest(s) in any matter requiring Board action or approval.

(b) Upon becoming aware of a conflict of interest or that there is an appearance of a conflict of interest, a Board member shall immediately recuse himself/herself, on the record, from participating in matter requiring Board action or approval.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-740 Other Inappropriate Conduct or Behavior

(a) A Board member shall not engage in any inappropriate relationship, sexual or otherwise, with a CPA official or employee while serving as a Board member.

(b) A Board member shall not direct, encourage or knowingly allow any CPA official or employee to engage in any inappropriate conduct or behavior with another CPA official or employee, such as fraternizing with a subordinate employee.

(c) CPA management employees and staff shall not withhold any information from the Board which relates to or affects a Board decision or action or which affects or would affect the integrity of CPA.

(d) Board members shall not engage CPA staff in the performance of non-CPA related activities. Board members shall not unnecessarily interfere with CPA staff members' performance of their duties and responsibilities.

(e) An "inappropriate conduct or behavior" by a CPA Board member, management employee or staff is conduct or behavior which is contrary to applicable law, rules, regulations or policy, such as the Commonwealth Ethics Code, CPA's enabling statute, or these ethics policy guidelines.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: In subsection (c), the Commission changed "to the Board" to "from the Board" and changed "affect or would affect" to "affects or would affect" to correct a manifest error.

§ 40-40-745 Applicability of Ethics in Government Act

These ethics policy guidelines shall be in addition to the Ethics in Government Act requirements and any other ethics law applicable to CNMI government officials and employees. Whenever any of these policies is in conflict with applicable law, the law shall govern.

Modified, 1 CMC § 3806(f).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Part 800 - Applicability

§ 40-40-801 In General

All provisions of this chapter shall apply to all persons who have the status of employees of CPA, except those employees exempted from its coverage in § 40-40-101, unless expressly made applicable to exempted employees. The Board and any independent

contractor or consultant retained by the Board are not employees of CPA and the provisions hereof shall not apply to such persons, unless specifically made applicable herein.

Modified, 1 CMC § 3806(c), (d).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

§ 40-40-805 Applicability of Particular Sections

The following provisions of this chapter shall also apply to all ungraded CPA employees hired under contract:

- § 40-40-20 Payment of Salary;
- § 40-40-235 Policies and Procedures - Travel;
- § 40-40-255 Severance Pay;
- § 40-40-260(c) Typhoon Emergency Pay;
- § 40-40-310 Political Activities;
- § 40-40-315 Equal Employment Opportunity;
- § 40-40-320 Policy Against Sexual Harassment;
- Part 400 All Employment Benefits, unless contract specified differently;
- Part 500 Drugs and Alcohol Policy;
- § 40-40-601 Conflict of Interest and Nepotism;
- § 40-40-605 Internal Operating Procedures;
- § 40-40-610 Promulgation of Personnel Policies and Procedures; and
- Part 700 Ethics Policy Guidelines

Modified, 1 CMC § 3806(c), (d).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The 2002 notice of adoption changed the proposed language of this section. See 24 Com. Reg. at 19409 (July 29, 2002).

Part 900 - Amendments and Modifications

§ 40-40-901 Amendments and Modifications

The provisions of this chapter contained herein may be modified or amended by a majority vote of the Personnel Affairs Committee. Any such amendment or modification, shall become effective upon ratification by the Board of Directors, and adopted in accordance with the Administrative Procedure Act [1 CMC §§ 9101, et seq.].

Modified, 1 CMC § 3806(d), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The Commission changed “Procedural” to “Procedure” to correct a manifest error.

Part 1000 - Regulatory Authority and Applicability of CNMI Personnel Service System Rules and Regulations

§ 40-40-1001 Regulatory Authority

These personnel rules and regulations in this chapter are promulgated pursuant to the Commonwealth Ports Authority’s statutory authority to hire its own employees who are exempted from the CNMI Civil Service System, 2 CMC § 2122(n) and pursuant to CPA’s Authority to promulgate necessary rules and regulations, 2 CMC § 2122(j). The rules and regulations herein are promulgated in accordance with the Administrative Procedure Act, 1 CMC §§ 9104, et seq.

Modified, 1 CMC § 3806(d), (g).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Commission Comment: The Commission changed “Procedural” to “Procedure” to correct a manifest error.

§ 40-40-1005 Applicability of CNMI Personnel Service System Rules and Regulations

Whenever CPA’s personnel rules and regulations in this chapter do not have any particular regulation on a personnel matter or issue affecting CPA or any of its employees, CPA shall refer to and shall apply the CNMI Personnel Service System Rules and Regulations [NMIAC, title 10, chapter 20.2] to address such personnel matter or issue, until such time as the CPA Board of Directors has adopted a regulation addressing such personnel matter or issue.

Modified, 1 CMC § 3806(d).

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Exhibit A (to § 40-40-220)

CPA executive, administrative, and professional employees listed below are not eligible to receive overtime compensation:

Executive Director	Port Manager, Saipan
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Deputy Director	Asst. Port Manager, Saipan
Executive Assistant	Telecommunication Specialist
Comptroller	Deputy Comptroller
Accounting Manager	Accounting Supervisor
Personnel Manager	Office Manager
Staff Engineer	Public Information Officer
Executive/Board Secretary I & II	Executive Secretaries
Property/Lease Program Manager	Enforcement/Lease Compliance Officer
Airport Manager	Assistant Airport Manager
Special Projects & Procurement Coord.	Administrative Assistants
Supervisor, Seaport Operations	Staff Attorney
Supervisor, Operations	Asst. Supervisor, Operations
Supervisor, Terminal Maintenance	Asst. Supervisor, Terminal Maintenance
Chief, Ports Police	Asst. Chief, Ports Police
Chief, ARFF	Asst. Chief, ARFF
Rota Ports Manager	Tinian Ports Manager
Asst. Ports Manager (Rota & Tinian)	Supervisor, Radio/Weather Observer
Asst. Chief, Ports Police/ARFF	Supervisor, Maintenance/Custodial
Asst. Supervisor, Maintenance/Custodial	Supervisor, Seaport Operations
Supervisor, Landscaping & Gardening	Asst. Supervisor, Landscaping & Gardening
Port Development & Operations Specialist	All new managerial, supervisory and assistant level personnel not listed above.

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Exhibit B
Table of Suggested Penalties

[Click to view image](#)

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

Exhibit C
Commonwealth Ports Authority Salary Schedule

[Click to view image](#)

History: Adopted 24 Com. Reg. 19402 (July 29, 2002); Proposed 24 Com. Reg. 18913 (Jan. 29, 2002).

CHAPTER 40-50
PROCUREMENT RULES AND REGULATIONS

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Chapter Authority: 2 CMC § 2122(j).

Chapter History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 29 Com. Reg. 26691 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26436 (Mar. 15, 2007); Amdts Adopted 29 Com. Reg. 26690 (Aug. 17, 2007); Amdts Proposed 29 Com. Reg. 26453 (Mar. 15, 2007); Amdts Adopted 17 Com. Reg. 13748 (Oct. 15, 1995); Amdts Proposed 17 Com. Reg. 13261 (Apr. 15, 1995); Amdts Adopted 15 Com. Reg. 10565 (Apr. 15, 1993); Amdts Emergency 14 Com. Reg. 9769 (Oct. 15, 1992) (effective for 120 days from October 15, 1992); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general comment to chapter 40-10.

In August 2007, CPA added § 40-50-410 to this chapter establishing a residency preference.

Part 001 - General Provisions

§ 40-50-001 Authority

The regulations in this chapter are promulgated under the authority of 2 CMC § 2122(j).

Modified, 1 CMC § 3806(d).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-005 Purposes

The underlying purposes and policies of this chapter are:

- (a) To provide for increased public confidence in the procedures followed in Authority procurement;
- (b) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the Authority;
- (c) To provide increased economy in Authority procurement activities and to maximize to the fullest extent practicable the purchasing value of Authority funds;

- (d) To foster effective broad-based competition within the free enterprise system; and
- (e) To provide safeguards for the maintenance of a procurement system of quality and integrity.

Modified, 1 CMC § 3806(g).

Commission Comment: The Commission replaced “insure” with “ensure” in subsection (b).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-010 Requirement of Good Faith

This chapter requires all parties involved in the negotiation, bidding, performance or administration of Authority contracts to act in good faith.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-015 Application of Regulations

This chapter applies to every expenditure of Authority funds which are not subject to federal procurement requirements. These provisions shall be construed and applied in a manner consistent with all Federal Law and Regulations, including, but not limited to 49 C.F.R. 18.36 Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments requirements relating to grant funds for Airport Improvement Projects, whether funded in whole or in part by AIP Grant Funds or formula grants. This chapter does not apply to contracts between the Authority and the government or its political subdivisions or other governments. Nothing in this chapter shall be construed to prevent Authority from complying with the terms and conditions of any grant, cooperative agreement or memoranda of understanding. Pursuant to 2 CMC § 2132(c), this chapter shall not apply to the procurement of professional, advisory, or technical services.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-020 Severability

If any provision of this chapter or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of this chapter which can be given effect without the invalid provision or application, and to this end, the provisions of this chapter are declared to be severable.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-025 Validity of Contract

No Authority contract covered by this chapter shall be valid unless it complies with this chapter.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-030 Remedy Against Employee

Any procurement action of an employee of Authority in violation of this chapter is an action outside the scope of his or her employment. The Authority will seek to have any liability asserted against it by a contractor which directly results from these improper acts to be determined judicially to be the individual liability of the employee who committed the wrongful act.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-035 Definitions

As used in this chapter, unless the context otherwise requires, the following meanings apply:

- (a) “Appeal Committee” means the special committee of the Board authorized to hear appeals.
- (b) “Attorney” means the legal counsel of the Authority.
- (c) “Authority” means the Commonwealth Ports Authority or “CPA” to also mean the Commonwealth Ports Authority as may be referred to in this chapter.
- (d) “Board” means the Board of Directors of the Authority.

(e) “Construction” means the process of building, altering, repairing, improving or demolishing of a public structure or building or public improvements commonly known as “capital improvements.” It does not include the routine maintenance of existing structures, buildings, or public real property.

(f) “Contract” means all types of agreements, regardless of what they may be called for the procurement of supplies, services or construction.

(g) “Contracting officer” means the person the Chairman of the Authority Board of Directors or authorized person designated in such acting capacity authorized by the Board through the Chairman to execute and supervise the administration of all contracts and who shall have authority to review and approve any Change Orders to contracts so long as such change orders do not require any reprogramming of funds or exceed the authorized budget for such a contract.

(h) “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and this chapter, and a fee, if any.

(i) “Dispute” means a disagreement concerning the legal rights and obligations of contracting parties, which, if not settled by mutual agreement, must be referred to a neutral third party for resolution.

(j) “Employee” means an individual receiving a salary from the Authority. Consultants, independent contractors and part-time workers shall not be considered employees.

(k) “Executive Director” means the Executive Director of the Authority, or his designee.

(l) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of personal property, and sale or other disposal of personal property.

(m) “Government” means the Commonwealth of the Northern Mariana Islands government which includes the executive, legislative and judicial branches.

(n) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.

(o) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association or a private legal entity.

(p) “Procurement” means buying, purchasing, renting, leasing or acquiring construction, goods or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and

solicitation of sources, preparation and award of contract, and all phases of contract administration. It also includes procurement of professional, advisory, or technical services.

(q) “Purchase description” means the words used in a solicitation to describe the goods, services or construction to be purchased and includes specifications attached to, or made part of, the solicitation.

(r) “Responsible” in reference to a bidder, means a person who has the capability in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.

(s) “Responsive” in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.

(t) “Services” means the furnishing of time, labor or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans and incidental documents. It does not include professional, advisory, or technical services.

(u) “Firm-fixed-price Contract” means any contract which provides for a price which is not subject to and which does not authorize any subsequent adjustment as a result of the contractor’s cost-experience in performing the contract. This type of contract places, and shall be construed as such, upon the contractor the maximum risk for loss and the contractor shall bear full responsibility for all costs, foreseen or unforeseen, or any resulting profit or loss as a result of the performance of the contract.

(v) “Purchase description” means the words used in a solicitation by the Authority, in whatever form, to describe in narrative and/or technical fashion the goods, services, or construction services to be purchased or contracted for and which includes specifications attached to, or made part of, the solicitation.

(w) “Requirements Contract” means a contract which provides for the filling of all actual purchase requirements of designated Authority activities for supplies or services during a specified period, with deliveries or performance to be scheduled with the contractor and which the contractor is obligated to deliver and provide in return for a fixed amount or rate to be paid by the Authority.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-040 Public Access to Procurement Information

Procurement information, whenever practical, shall be a matter of public record and shall be available for public inspection pursuant to the CNMI Open Government Act at 1 CMC

§ 9901 et seq. Procurement information may be kept confidential when necessary to insure proper bidding procedures or to protect private; confidential; financial or technical data; trade secrets; or other proprietary information submitted by a proposing party or bidder or any other applicable exemption under the Open Government Act. This decision shall be made only by the Executive Director or the Authority designated Procurement Officer or authorized designee.

Further, any contractor, vendor or proposer submitting information, whether technical or proprietary as to price, shall so indicate to the Authority through the Executive Director in any submission and explain the nature of the information and why it must be designated as private or confidential/exempt under the Open Government Act. Any request for public records of exempt or private materials shall also require reasonable notice to any contractor, vendor, or proposer to be allowed to respond or undertake measures to protect such information.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission corrected the citation to the Open Government Act to “1 CMC § 9901 et seq.”

Part 100 - Procurement Organization

§ 40-50-101 Executive Director and Procurement Officer

The Executive Director and/or the designated Authority Procurement Officer or authorized designee shall enforce this chapter. The Authority Procurement Office and the position of an Authority Procurement Officer are hereby established within the Authority Comptroller’s Office/Accounting Section for the purpose of oversight and administration of the provisions of this chapter. Ultimately, the Executive Director shall have the responsibility for compliance with this chapter and its application or enforcement.

Modified, 1 CMC § 3806(g).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-105 Duties of the Executive Director and designated Authority Procurement Officer

The duties and responsibilities of the Executive Director include, but are not limited to, the following:

(a) Oversee that this chapter is observed in all Authority procurement. The Executive Director shall provide for full and open competition for goods and services under this chapter through use of the competitive procedure that is best suited to the circumstances of the contract action. However, the Executive Director may appoint and designate a Procurement Officer to carry out the provisions of this chapter and all related duties and responsibilities of procurement. The Procurement Officer shall be within the Comptroller's Office/Accounting for purposes of administration and oversight since procurement requires coordination with the Comptroller as to expenditures and certification of funds available for all procurement;

(b) Conduct bidding, procurement, negotiation or administration of Authority contracts including, but not limited to, receiving requests for procurement/proposals/bids from Authority managers or personnel; determining availability of funds for procurement in consultation with the Comptroller; preparing and issuing publications soliciting proposals, qualification statements, or other bids; assembling the record of submissions; preparing the criteria for review of proposals; developing the relevant procurement forms; and establishing a uniform set of Standard Operating Procedures for procurement within the Authority;

(1) The Executive Director may direct the establishment of Standard Operating Procedures for Procurement which shall contain the developed and approved forms and procedures consistent with this chapter;

(2) The Executive Director may direct the Comptroller to establish additional procedures and fiscal controls for procurement in order to ensure oversight and accountability in the procurement process including Purchase Orders; Purchase Requisition or Voucher Forms; Requests to Initiate Requests for Proposals or Invitations for Bids; Petty Cash Authorization; and other appropriate forms.

(c) Provide advanced planning for the centralized purchase of Authority supplies;

(d) Exercise general supervision and control over all inventories of supplies belonging to the Authority including, but not limited to, developing procedures and forms for cost controls and accounting; and

(e) Establish and maintain programs for the inspection, testing and acceptance of supplies.

(f) Sell, auction, trade, transfer, convey, release or otherwise dispose of surplus or abandoned property found on Authority property or left on Authority premises; or any other property belonging to and no longer needed by the Authority as certified by the manager or supervisor with oversight or control over such property in the following manner:

(1) The Executive Director shall, in consultation with the Ports Police Chief and other section managers, establish a procedure for handling abandoned property including

the appropriate notice forms. The Authority has jurisdiction and control over its premises as to all property or vehicles brought into the premises;

(2) As to abandoned personal vehicles, the Executive Director shall issue citations to vehicles parked on Authority premises in excess of authorized periods. After a period of thirty (30) days without claim or notice to the Authority or payment of any due fines or fees, any vehicle found thereafter shall be deemed abandoned. The Ports Police Chief shall place on the vehicle a “Notice of Determination of Abandonment and Intent to Sell or Dispose of Vehicle” which shall give notice to the owner of such determination and intent to sell or dispose of the abandoned vehicle within sixty (60) calendar days. Further, the Ports Police Chief shall verify ownership with the CNMI Bureau of Motor Vehicles and give the same notice to BMV and undertake due diligence to give notice to the vehicle owner.

(3) After a period of sixty (60) calendar days without any claim or notice of right, the Executive Director may sell the vehicle at auction and shall publish a Notice of Auction giving the public notice of auction of the vehicle, “as is/where is” and without any warranties nor guarantees as to condition or ownership, for a sum certain. The auction shall be held and the abandoned vehicle disposed of accordingly.

(4) As to any salvaged property of the Authority, the Executive Director may conduct a public auction to sell any property and such funds shall be accounted for and received by the Comptroller. Alternately and at its discretion, the Authority through the Executive Director may retain such abandoned property including vehicles for its use if doing so is deemed in the best interest of the Authority or the Authority Executive Director may donate such property to any government agency, public school or private non-profit organization and set conditions for such donation without any liability of the Authority and so long as any such donated property contains no hazardous materials.

(g) Exercise general oversight and control on the use of physical assets and other capital equipment to prevent waste or abuse or other unauthorized use;

(h) Receive, review, hear, and decide on all protests or disputes as to any matters under this chapter.

Modified, 1 CMC § 3806(g).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission replaced “used” with “use” in subsection (g) to correct a manifest error.

§ 40-50-110 Contract Review and Oversight

(a) The Executive Director has responsibility for contract review and oversight of all Authority contracts. The Board Chairman or his designee or such person in Acting Chairman capacity is the Contracting Officer. The Executive Director shall first review all contracts for construction, the procurement of goods, leases, the sale of goods and for services by an independent contractor to insure compliance with this chapter, that the contract is for an Authority purpose, and does not constitute a waste or abuse of Authority funds. All contracts must first be prepared by the Procurement Officer who shall certify compliance with this chapter and any applicable federal statutory or regulatory provisions or requirements; that the proposed contract is for a public purpose; and that the contract does not constitute a waste or abuse of Authority funds regardless of source. All contract documents must be complete including attachments and exhibits if they are incorporated into the contract by reference. If there are any defects with any contract or there were defects in the procurement process, the Procurement Officer shall report the defects to the Executive Director who shall not execute such contract until the Procurement Officer certifies correction of such defects.

(b) The designated Authority attorney shall certify the form and legality of every applicable contract. In the situation where the Authority attorney finds legal deficiencies with a contract or the procurement process, he/she shall return the contract to the Procurement Officer noting the deficiencies and the corrective action required.

(c) It is the responsibility of the Executive Director or Procurement Officer to ensure that the contractor does not sign the contract or incur any expenses under it until all necessary Authority signatures have been obtained. The supervision and inspection of a project is the primary responsibility of the Executive Director or Procurement Officer.

(d) No contract is effective against the Authority until all of the officials whose signatures appear on the contract form have signed the contract. The Executive Director, unless so required by the Board of Directors as to any particular contract, is the designated contracting officer for the Authority and has the legal capacity to sign for on behalf of the Authority under this chapter. A contract shall contain a right to audit records clause.

(e) Nothing in this chapter shall be construed to limit or prevent the Authority's duty and power, pursuant to 2 CMC § 2122(i), to enter into agreements with the government, its departments and agencies for the rendering and purchase of services, nor shall this chapter be construed to limit or prevent the Authority's duty and power, pursuant to 2 CMC § 2122(e) and (g), to lease out its real property.

(f) The Authority Comptroller shall certify every contract as to availability of funds and such certification shall also be construed to mean that the expenditure of funds for such contract or procurement is authorized pursuant to the budget for that fiscal year or pursuant to any reprogramming authorization by the Board of Directors. The Comptroller shall not sign any contract or procurement request which is not authorized by the Budget or exceeds fiscal authorization unless reprogramming or authorization is first obtained.

Modified, 1 CMC § 3806(g).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 15 Com. Reg. 10565 (Apr. 15, 1993); Amdts Emergency 14 Com. Reg. 9769 (Oct. 15, 1992) (effective for 120 days from October 15, 1992); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission inserted a period (.) at the end of the last sentence of subsection (a) to correct a manifest error.

§ 40-50-115 Acceptance of Gratuities

The members of the Board or employees of the Authority cannot accept from any person any gift of value given to them with the intent to influence their business judgment.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Part 200 - Source Selection and Contract Formation

§ 40-50-201 Methods of Source Selection

As to every procurement or procurement under this chapter funded by the Authority or from CNMI Government or Local Delegation Appropriations, the Authority may require each vendor, proposer, bidder, contractor, consultant, sub-contractor and agent to have a valid CNMI Business License and valid CNMI Taxpayer Identification Number except as exempted by any applicable Federal Law or Regulation. Projects or procurement funded by federal funds may be governed or processed under separate regulations or procedures. Further, all Authority contracts shall be awarded pursuant to an Invitation for Bids, except as provided in:

- (a) § 40-50-210 (Small Purchases);
- (b) § 40-50-215 (Sole Source Procurement);
- (c) § 40-50-220 (Emergency Procurement);
- (d) § 40-50-225 (Requests for Proposals).

Modified, 1 CMC § 3806(g).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 15 Com. Reg.

10565 (Apr. 15, 1993); Amdts Emergency 14 Com. Reg. 9769 (Oct. 15, 1992) (effective for 120 days from October 15, 1992); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: The Commission removed the semicolon (;) and inserted a period (.) at the end of subsection (d) to correct a manifest error.

§ 40-50-202 Architect-Engineer Design and Construction Management Services

(a) Architect-Engineer and Construction Management Services shall be procured as provided in this section except when authorized as a sole-source procurement.

(b) The Executive Director and Procurement Officer shall consult with the Authority Engineering Department or Section and maintain files of current statements of qualifications of architect-engineer or construction-management firms. The Authority shall solicit and publicly announce all requirements for architect-engineer or construction-management services for Authority projects based on the project requirements and needs. The Authority shall set forth the requirements for such firms and establish an evaluation plan for qualifications.

(c) The Authority shall select the top three qualified firms determined to be the most highly qualified to perform the services required. The criteria for selecting consultants under this section may include, but are not limited to, the general reputation of the firm and A/E design or construction-management experience within the CNMI, the Pacific region or in the industry; the firm's level of proficiency or experience related to Authority projects funded in whole or in part by Federal funds or the Federal Aviation Administration; the firm's level of proficiency in performing A/E or construction-management services promptly particularly as to Airport Improvement Project (AIP) grants and in performing whatever services are being sought or required; and the firm's existing quantity of workload; the firm's professional integrity and experience including its history with change orders; field changes; redesign of projects; omissions or oversight requiring design work; and the resume or qualifications of the firm's personnel including professional qualifications and licenses. Thereafter, the Authority shall engage in discussions regarding the contract requirements and technical approach. Fee proposals shall not be considered in the selection of the most highly qualified firms but the Authority may establish a costing of the project as a means of measuring its fiscal projections.

(d) The Authority, through the Executive Director or his designated representative, shall negotiate a contract with the highest qualified architect-engineer or construction-management firm at a price determined to be fair and reasonable to the Authority. In determining what is a fair and reasonable price the Executive Director shall consider factors relevant to the contemplated project such as experience; technical qualifications; qualifications and experience of its personnel; past projects for the Authority and other projects within the CNMI. If a fair and reasonable price cannot be negotiated and agreed upon with the highest qualified firm, then the Executive Director shall proceed to the next firm in order of competence and qualification and continue negotiations until a fair and reasonable price is agreed upon.

(e) However, for specialized or highly-technical projects or services deemed as such by the Authority, the Authority may procure services without requiring qualification statements. Specialized or highly-technical projects or services are those which are not regularly available within the CNMI which require specialized skills or expertise critical to the operations of the Authority.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

Commission Comment: The Commission inserted the apostrophe (‘) after “firm” in subsection (c) to correct a manifest error.

§ 40-50-203 [RESERVED]

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

§ 40-50-204 [RESERVED]

History: 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

§ 40-50-205 Invitation for Bids

(a) The purchase of all services, goods, supplies and materials and all construction works, when the expenditure exceeds \$25,000, shall be by contract let to the lowest responsible bidder. An Invitation for Bid may be solicited by the Executive Director or his authorized designee when the Authority determines that the best interests of the Authority are served by and/or any relevant Federal Law or regulation require an Invitation for Bid.

(b) Invitation for Bids. An invitation for bids shall be issued and shall include at the minimum:

- (1) An invitation for bids number or “CPA Project No.” designation
- (2) Date of issuance;
- (3) Name, address and location of issuing office;
- (4) Specific location where bids must be submitted;
- (5) Date, hour and place of bid opening;
- (6) A purchase description in sufficient detail to permit full and open competition and allow bidders to properly respond;
- (7) Quantity to be furnished;
- (8) Time, place and method of delivery or performance requirements;
- (9) Essential contractual terms and conditions;
- (10) Any bonding requirements;
- (11) A valid CNMI Business License and Taxpayer Identification Number unless exempted by the Authority or applicable Federal law or regulation; and

(12) A reasonable administrative fee for costs/handling for an IFB such as for scanning, duplication, or preparation depending on the nature or complexity of the IFB, the sum of which shall be set forth in the IFB solicitation.

(13) Purchase descriptions of construction, goods, or services shall detail to the greatest extent practicable the specific requirements the contractor is expected to perform or deliver. An adequate purchase description shall adequately set forth the essential physical and functional characteristics of the construction, goods, or services necessary to fulfill the Authority's minimum requirements;

(14) The bid solicitation shall accurately reflect the Authority requirement. It shall adequately state what is to be done or what is to be delivered to the Authority in order to allow bidders to properly respond and evaluations to be made on a uniform basis. Bids which fail this provision shall be deemed non-responsive.

(c) Public Notice.

(1) The Executive Director or Procurement Officer or authorized designee shall publicize all invitation for bids in order to increase competition and broaden industry participation. A bidding period of at least thirty (30) calendar days shall be provided unless the Executive Director or authorize designee certifies that a shorter time period is reasonable and necessary. However, the bidding period notice shall never be less than fourteen (14) calendar days. Further, the Executive Director or authorized designee may extend the bidding period for up to an additional ninety (90) calendar days considering the degree of urgency; the complexity of the contract requirements; the anticipated need for and extent for subcontracting; the geographical distribution of bidders; and the normal transmittal time for invitations and bids.

(2) The Procurement Officer or authorized designee shall publish the invitation for bids in two newspapers of general circulation in the Commonwealth at least once in each week from the time the solicitation is issued, including the week when the bidding period expires.

(d) Bid Receipt.

(1) All bids shall be submitted to the Authority Administration Section, Office of the Executive Director of the Authority at the Francisco C. Ada Terminal, Saipan International Airport unless otherwise designated by the Executive Director. Bids submitted under this chapter shall be sealed so that bid documents are entirely within an enclosed envelope or cylinder (as to designs); without any rubber band or other objects attaching documents; preferably sealed with tape and untampered in any way. The Bids shall marked outside with conspicuous marking indicating the CPA Project No. and indicating that it is an Invitation for Bid Submission: Confidential directed to the attention of the Executive Director. Bids shall be received prior to the time set for opening and shall be maintained sealed in a locked receptacle at that office.

(2) If a bid is opened by mistake, it shall be resealed and the person who opened the bid shall write his signature and print his title on the envelope and deliver it to the Executive Director or Procurement Officer or authorized designee. No information contained in the bid shall be disclosed prior to the bid opening. The Executive Director or Procurement Officer or authorized designee shall cause the opened bid to be placed into the sealed receptacle.

(e) Bid Opening. The bid opening shall be conducted by the Executive Director or Procurement Officer or authorized designee at the Conference Room of the Authority at the Saipan International Airport or some other designated location. Bids shall be opened publicly at the time and place designated in the invitation for bids. The amount of each bid, together with the name of each bidder shall be recorded on a "Bidder's Submission List." The Bidder's Submission List shall be open to public inspection. However, the individual bid packets may only be subject to public inspection after the Authority Executive Director has accepted the lowest bid pursuant to these regulations. In the event that the Executive Director determines that he needs further time to resolve any concerns or requires assistance of counsel to accept a bid, all bid packets shall remain sealed and exempt from public inspection. After acceptance of the lowest bid by the Executive Director, each bid submitted shall be open to public inspection pursuant to the Open Government Act subject to any applicable exemptions. The Executive Director or Procurement Officer or authorized designee shall prepare a written summary of the bid opening as soon as possible.

(f) Bid Acceptance and Bid Evaluation. Bids shall be unconditionally accepted without alteration or correction, except as authorized in this chapter. Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid for the particular purpose intended. A bid may only be considered by the Authority if the bidder accepts all material terms and conditions of the invitation, and any future award based upon the bid, if accepted by the Authority, would result in a binding contract with terms and conditions which follow and do not vary from the requirements of the invitation.

(g) Bid Rejection.

(1) A bid may be rejected for any of the following reasons:

- (i) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;
- (ii) Imposition of conditions or restrictions in the bid which modify or alter requirements of the invitation or limit the bidder's liability to the Authority;
- (iii) Unreasonableness as to price;
- (iv) A bid from a non-responsible bidder;
- (v) States a price but qualifies it as subject to a price in effect at time of delivery;
- (vi) Protects against future changes in conditions, such as increased costs; or
- (vii) Limits the rights of the Authority.

(2) The Authority's Right to Reject or Cancel Bids: The Authority, through the Executive Director or authorized designee, may reject any and all bids or cancel the IFB and re-advertise at its discretion. The Authority may cancel or reject bids for reasons deemed by the Executive Director to be in the best interest of the Authority, including but not limited to, a change of requirements for the IFB; any material confusion, ambiguity or vagueness in the IFB which were not apparent at publication; any change in the funding availability for a solicitation; a change or modification in the scope of the IFB; or the Authority wishes to impose additional requirements for bidders which are necessary and material for the IFB. If, after rejecting bids for materials and supplies, the Authority, through the Executive Director or authorized designee, determines that, in its opinion, the materials and supplies may be purchased at a lower price in the open market, the Authority may authorize such purchases without further observance of the provisions requiring contracts, bids or notices.

(h) Correction or Withdrawal of Bids; Cancellation of Awards. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on bid mistakes must be approved by the Executive Director or authorized designee in writing. After the bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the Authority or fair competition shall be allowed. Whenever a bid mistake is suspected by the Authority, the Authority shall request confirmation of the bid, prior to award, from the bidder. In such an instance, if the bidder alleges an error, the Authority shall only permit correction of the bid or withdrawal of the bid in accordance with subsection (1) or (2).

(1) Correction of bids. Correction of bids shall only be permitted when:

(i) An obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are errors in addition or the obvious misplacement of a decimal point; or

(ii) The otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence as to the bid intended and the corrected bid remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from an error in judgment.

(2) Withdrawal of Bids. Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake.

(3) Cancellation of Awards. The Cancellation of awards or contracts shall only be permitted when:

(I) Evidence as to the existence of the mistake is not discovered until after the award;

(ii) There exists no clear and convincing evidence to support the bid intended; and

(iii) Performance of the contract at the award price would be unconscionable.

(I) Award.

(1) The contract must be awarded with reasonable promptness by written notice to the lowest responsive bid by a responsible bidder whose bid fully meets the requirements of the invitation for bids and this chapter. Unsuccessful bidders shall also be promptly notified.

(2) Notice of an award shall only be made in writing.

(3) Notice of an award shall only be made by the presentation of a contract with all the required signatures to the bidder. No acceptance of an offer shall occur nor shall any contract be formed until a contract is written and has been approved by all required personnel of the Authority under this chapter.

Modified, 1 CMC § 3806(a).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 CR 32150 (Dec. 29, 2011). The amendments amended this section and entitled it “Invitation for Bids” where it was previously entitled “Competitive Sealed Bidding.” The Commission deleted the comma (,) in the phrase “examining, the bid document” in subsection (h)(1)(i) to correct a manifest error.

§ 40-50-210 Small Purchases

(a) Any procurement not exceeding \$3,000.00 may be made in accordance with small purchase procedures. However, procurement requirements shall not be artificially divided so as to constitute a small purchase.

(b) No bidding is required for any procurement of \$25,000.00 or less.

(c) The Executive Director or Procurement Officer or authorized designee shall obtain written price quotations and detailed proposals as to product description or services to be rendered. Any Authority section Manager or Supervisor may initiate a Small Purchase procurement by coordinating such a request through the Procurement Officer including preparing the request for quotations and a description of the goods or services required.

(d) Purchase Orders or Purchase Requisition requests may be utilized for small purchases below \$250.00 and may be administered by the Comptroller’s Office through the Procurement Officer.

(e) The Executive Director or Procurement Officer must obtain written price and quotations from at least three vendors for any procurement valued from \$250.00 to \$25,000.00.

(f) The Executive Director or Procurement Officer or authorized designee is authorized to process open purchase orders for a procurement valued from \$1,000.00 and below with authorized signers listed on the purchase order.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Amdts Adopted 29 Com. Reg. 26690 (Aug. 17, 2007); Amdts Proposed 29 Com.

Reg. 26453 (Mar. 15, 2007); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-215 Sole Source Procurement

(a) A contract may be awarded for a supply, service or construction item without competition when the contracting officer determines in writing that there is only one source for the required supply, service or construction item. This section shall be construed to include the purpose of obtaining professional services in highly specialized or technical expertise in aviation and admiralty; compliance with federal regulations; rate-setting consulting services; and whenever so required by any federal granting agencies or grant requirements.

(b) The written determination shall state the unique capabilities required and why they are required and the consideration given to alternative sources. The written determination shall contain the specific unique capabilities required; the specific unique capabilities of the contractor; the availability of funding for such services as certified by the Comptroller; and a written copy of any applicable federal grant or regulation under which the services are authorized or required.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-220 Emergency Procurement

In case of any major public calamity, or whenever it is in the interest of aviation or shipping safety, or necessary to keep the ports operable by the Authority or to protect any property as well as the protection of the environment or the people of the CNMI, the Executive Director in the exercise of his duties, may determine that the public interest and necessity demand the immediate expenditure of funds to keep the ports facilities open to traffic or in a safe condition, and thereupon authorize the expenditure of such sums as may be needed without the observation of the provision requiring contracts, bids or notices so that the provisions of this chapter shall be suspended and waived on account of such emergency or calamity.

In such emergency conditions, the Executive Director shall issue a summary finding or report of such calamity as soon as practical to the Comptroller and the Board advising of the emergency or calamity. Such "Emergency Notice and Emergency Expenditure of Funds" shall set forth the description of the emergency; the services or goods needed to address the emergency situation; the estimated cost for such goods or services; and the plan of action to be carried out. The Comptroller, whenever practical and preferably within five days or sooner, shall sign and concur with the Executive Director as to such emergency and undertake measures for the fiscal reprogramming and justification of expenditure for. Following the resolution of the emergency the Executive Director shall file his report with the Board within five days providing the further details relating to the

emergency; the actions taken; the expenditures; and any recommendations. The Board may issue continuing authorizations for the expenditure of funds described in this section, placing therein the conditions which will give rise to such special expenditures.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-225 Request for Proposals

(a) Conditions for use. The purchase of all services, goods, supplies and materials and all construction work, when the expenditure or procurement by the Authority exceeds \$25,000.00 may be made through a Request for Proposal as set forth in this section when the Executive Director, in the exercise of his/her discretion, determines in writing that the use of an Invitation for Bid is either not practical or not advantageous to the Authority, a contract or procurement may be obtained through a Request for Proposals. However, nothing shall limit or restrict the Authority, through the Executive Director or an authorized designee, from soliciting a Request for Proposals for any procurement for a service or contract for less than \$25,000 should it be in the best interest of the Authority, on discretion of the Executive Director, to do so.

(b) Request for proposals. Proposals shall be solicited through a Request for Proposals or "RFP".

(c) Public Notice. Adequate public notice of the request for proposals shall be given in the same manner as provided for in competitive sealed bids.

(d) Receipt of sealed proposals. Proposals shall be submitted in sealed envelopes and unopened so as to avoid disclosure of contents to competing proposers during the process of negotiation. Proposals shall be restricted to the members of the Evaluation Committee and shall not be disclosed nor discussed to anyone outside of the Evaluation Committee until after the completion of the evaluation and ranking of proposals. Proposals may be prepared and opened for public inspection after contract award.

(e) Evaluation factors.

(1) The request for proposals shall state the relative importance of price; project requirements; quantity of materials; scope of services; experience required; insurance requirements; sufficiency of workers or materials needed; the timeline for project completion; the deliverables required; and other evaluation factors relevant and necessary to describe the project requirements.

(2) Before conducting an evaluation of proposals pursuant to an RFP, the Authority through the Procurement Officer shall develop, and the Executive Director shall approve, an evaluation plan which at a minimum shall include:

- (i) A statement of the evaluation factors and any significant subfactors and their importance;
- (ii) A description of the evaluation process; the point system to be used as to the criteria for evaluation; the methodology; and the techniques to be used; and
- (iii) Documentation requirements.

(f) Discussion with responsible proposers and revisions to proposals. As provided in the request for proposals, discussions may be conducted with responsible proposers who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification and to insure full understanding of, and responsiveness to, solicitation requirements. The Executive Director may initiate such discussions or any proposing party may request such discussions. However, such discussions may only occur after advance written notice to all proposers as to the nature of the discussion and issues to be clarified and the date and time for such discussion(s). There shall be no separate discussions nor communications between the Executive Director with any proposer at any time. Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such revisions may be permitted after submission and prior to award for the purpose of obtaining the best and final offers. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers. The Executive Director may, after such discussions, invite "Best and Final Offers" from each proposer to be submitted on a certain date. Alternately, the Executive Director may stay with the existing proposals and consider them. The Executive Director may only receive best and final offers from each proposer where, after discussions, there is clarification of the request for proposals and resolution of any ambiguities or vagaries in the request by the Authority for such proposals.

(g) Evaluation Committee: The Executive Director or his designee shall convene an Evaluation Committee comprising of a representative of the following Authority sections/divisions in order to have as representative and wide range of perspectives and experience: Accounting Section; Administration Section; Engineering Section; Ports Police; Airport Aircraft Rescue & Firefighting (AARF); Operations Section; and Maintenance Section. There shall be no less than three (3) members up to five (5) members. Whenever practical, members of the Evaluation Committee should have some training, familiarity, or experience with the proposal being reviewed. As a matter of policy, the Authority should strive to afford in-service training, whenever possible, to its employees as to procurement procedures and standards so that their participation in the evaluation process is productive and helpful to the Authority and fair to all proposers. The Executive Director shall, by Memorandum, direct the Evaluation Committee to convene as soon as practical following the close of the period for submission of proposals. The Evaluation Committee shall deliberate and apply the evaluation criteria in this section to determine the most responsible and most responsive proposer by rank.

(h) Award. Award shall be made to the responsible proposer whose proposal is determined in writing to be most advantageous to the Authority taking into consideration price and the evaluation factors set forth in the request for proposals and as applied in the

evaluation plan. No other factors nor criteria shall be used in the evaluation which are not in the evaluation plan. The contract file shall contain the basis on which the award was made; all evaluation sheets; and any closing report of the evaluation committee. Unsuccessful proposers shall be given notice within three (3) days of the date of contract award and the notice shall inform of the number of proposals received; the name and address of the proposer receiving an award; and in general terms the reason why the proposer's submission was not accepted. In no event shall a proposer's cost breakdown, profit, overhead rates, trade secrets, manufacturing processes and techniques, or other confidential business information be disclosed to any other proposer. The contract file shall contain the selected proposal and the information and basis on which the award was made.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 CR 32150 (Dec. 29, 2011). The amendments amended this section and entitled it "Request for Proposals" where it was previously entitled "Competitive Sealed Proposals." The amendments also created section (g) (Evaluation Committee).

Part 300 - Cancellation of Invitation for Bids or Requests for Proposals

§ 40-50-301 Cancellation

(a) An Invitation for Bids or Request for Proposals may be cancelled, and any and all bids or proposals may be rejected, when such action is determined by the Executive Director or the Board, upon the consideration of an appeal by the Appeals Committee, including, but not limited to, the following reasons:

- (1) Inadequate or ambiguous specifications contained in the solicitation;
- (2) Specifications which have been revised;
- (3) Goods or services being procured are no longer required;
- (4) Inadequate consideration given to all factors of cost to the Authority in the solicitation;
- (5) Bids or proposals received indicate that the needs of the government can be certified by a less expensive good or service;
- (6) All offers with acceptable bids or proposals received are at unreasonable prices;
- or
- (7) Bids were collusive.
- (8) It is in the best interest of the Authority, in the exercise of its discretion, to cancel the Invitation for Bid or Request for Proposal.

(b) The Executive Director or the Board, on appeal, shall have the right to cancel an award without any liability to the bidder or proposer including, but not limited to, interest charges, compensatory damages, consequential damages, attorneys' fees, restocking

charges, shipping charges, surety or bonding charges, taxes, or any other costs, except the return of any deposit, guarantee or other security, at any time before a contract has been fully executed by all parties.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 CR 32150 (Dec. 29, 2011). The amendments created subsection (a)(8).

Part 400 - Qualifications and Duties

§ 40-50-401 Responsibility of Bidders and Proposers

(a) Awards shall be made to responsible contractors. To be determined responsible, a prospective contractor must:

(1) Have adequate financial resources to perform the contract, or the ability to obtain them;

(2) Be able to comply with the required delivery or performance schedule;

(3) Have a satisfactory performance record;

(4) Have a satisfactory record of integrity and business ethics including a current tax clearance; no adverse record relating to employment matters including but not limited to matters before the CNMI Department of Labor, Federal Immigration Laws, Davis Bacon Act, the CNMI Division of Environmental Quality or the U.S. Environmental Protection Agency, U.S. Department of Labor, U.S. Department of Commerce, the Federal Aviation Administration; the Federal Maritime Commission; the United States Coast Guard and the United States Equal Employment Opportunity Commission; or the U.S. Internal Revenue Service;

(5) Have the necessary organization, experience and skills, (or the ability to obtain them) required to successfully perform the contract;

(6) Have the necessary production, construction and technical equipment facilities, or the ability to obtain them;

(7) When required by the Authority, have a valid CNMI Business License and may, whenever practical, an office on the island where the construction work or service is to be performed; and

(8) Be otherwise qualified and eligible to receive an award under applicable laws and rules.

(9) The above factors are not to be deemed exclusive.

(b) Obtaining information. Prior to award, the Executive Director or Procurement Officer shall obtain information from the bidder or proposer necessary to make a determination of responsibility using the factors in subsection (a) above. The unreasonable failure of a bidder or proposer to promptly supply information in

connection with an inquiry with respect to responsibility may be grounds for determination of non-responsibility with respect to that bidder or proposer.

(c) Right of non-disclosure. Information furnished by a bidder or proposer pursuant to subsection (b) may not be disclosed outside of the office of the Authority without prior consent by the bidder or proposer.

(d) Non-responsibility determination. When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, a written determination shall be signed by the Executive Director or Procurement Officer stating the basis for the determination and this shall be placed in the contract file.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: On December 29, 2011, the Commonwealth Ports Authority adopted amendments to the procurement rules and regulations. 33 CR 32150 (Dec. 29, 2011). The Commission deleted a comma (,) in (a)(5) to correct a manifest error.

§ 40-50-405 Pre-qualification of Contractors/ Request for Qualification Statements

Prospective suppliers of goods or services may be pre-qualified for particular types of construction, goods and services when determined necessary by the Executive Director or Procurement Officer. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, pre-qualified suppliers. In no event will bidders be allowed to qualify after the bid opening. However, the Executive Director has the discretion to cancel any requests for qualification statements or cancel any pre-qualification process whenever deemed in the best interest of the Authority.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-410 Heightened Residency Preference in Specific Contracts for Services

(a) Authority.

This section is hereby promulgated by the Commonwealth Ports Authority in accordance with the Administrative Procedure Act and its enabling statute and shall have the force and effect of law.

(b) Statement of Purpose.

Whereas the Authority reaffirms its obligation to enter into contracts only with responsible contractors who have the ability to perform the contract, in these times of

economic hardship and massive unemployment, the Authority is compelled to join with other agencies of the CNMI government to enforce and adopt measures insuring that CNMI labor laws requiring mandatory inclusion of local residents be enforced. Further, inasmuch as the Authority is responsible for ensuring homeland security at our ports it is imperative that all contractors employ resident workers for work on the Authority premises. As an autonomous agency, the Authority may impose a greater resident worker percentage in awarding contracts for services in its discretion which is based on providing our residents with an economic advantage in employment, particularly in unskilled or in semi-skilled areas of services such as landscaping or tree-trimming.

(c) Increased Percentage in Local Hiring of Resident Workers in Contracts or Services.

Unless such a provision would conflict with a Commonwealth or federal law or regulation applicable to a particular contract for public works or improvements, all Authority contracts for yard-maintenance; bush-cutting; lawn-maintenance; tree-trimming; or landscaping shall contain provisions to which the contractor warrants, represents and obligates itself, at all times during the period of the contract, to hire and employ qualified individuals who are residents of the Commonwealth in sufficient numbers so that no less than seventy five percent of the contractor's total work force, including management and any subcontractor work force, measured in labor work hours, is comprised of residents of the Commonwealth, as defined in the Nonresident Worker's Act and in this section [§ 40-50-410(i)].

(d) Required Documentation on Record for Each Contractor.

(1) In submitting bids or proposals for services to the Authority for yard-maintenance; bush-cutting; lawn-maintenance; tree-trimming; or landscaping every contractor shall state their acknowledgment of the heightened resident worker requirement and certify that the bidding contractor has the minimum percentage of resident workers or shall have the minimum percentage of workers employed and hired within thirty days of any award of a contract for services to which § 40-50-410 applies.

(2) Each contractor for yard-maintenance; bush-cutting; lawn-maintenance; tree-trimming; or landscaping services shall keep records and provide to the Authority upon request to do so, on standardized forms acceptable to the Authority, an accurate record showing the name, place of residence, hours employed and per diem wages and benefits of each person employed by the contractor and the contractor's subcontractors, on the specific projects covered by § 40-50-410, including full-time, part-time, permanent and temporary employees.

(3) All forms required under § 40-50-410 retained by the contractor shall attest to the veracity of the information set forth therein and shall be submitted under penalty of perjury. The federal form known as the I-9 is an acceptable document for use or evidence of compliance with § 40-50-410. As to proof residency for a worker, acceptable forms of proof are birth certificates; passports; entry permits or other documentation from the CNMI Department of Labor or Division of Immigration showing local "immediate relative" status; or a "green card" from the United States Bureau of Citizenship Services.

(e) Sanctions for Non-Compliance.

(1) Notwithstanding any civil or criminal penalties available under the laws of the Commonwealth of the Northern Mariana Islands for perjury, the Authority may also debar the contractor or subcontractor as set forth in this chapter for perjury or material misrepresentations on any forms submitted to the Authority in connection with a contract bid or award.

(2) Should any contractor or subcontractor fail to abide by the heightened local workforce provisions of § 40-50-410, the contractor or subcontractor may be declared by the Authority to be an irresponsible bidder. Such declaration shall mean that the contractor or subcontractor is debarred from further contracts with the Authority. The debarment may be rescinded by the Authority upon terms and conditions acceptable to the Authority, but such rescission is not required and is solely at the discretion of the Authority.

(f) Binding on Subcontractors.

The local hiring provisions of § 40-50-410 shall bind the contractor both with respect to persons hired directly by the contractor and to all persons hired by the contractor's subcontractors. The contractor shall be responsible for assuring that all subcontractors document said compliance by submitting, and making available to the Authority such documents for verification and/or to any local agency so designated by the Authority including the Division of Immigration.

(g) Inclusion in Contracts — Bid Documents — Subcontracts.

(1) Contracts and bid documents shall incorporate § 40-50-410 by reference and shall provide that the failure of any contractor or subcontractor to comply with any of its requirements shall be deemed a material breach of the contract or subcontract entitling the Authority to all the remedies and damages available for material breach of a contract.

(2) All subcontracts shall expressly acknowledge the Authority's status as a third party beneficiary to the subcontract and further expressly acknowledge that the Authority, as a third party beneficiary, shall have the right to enforce the provisions of § 40-50-410 with regard to that subcontract or seek remedies available under § 40-50-410, should a party to the subcontract fail to comply with any of the provisions of § 40-50-410 that apply to the subcontract.

(3) Contracts and bid documents shall require bidders, contractors and subcontractors to maintain records necessary for monitoring their compliance with § 40-50-410.

(h) Exception for Emergency.

The provisions of § 40-50-410 shall not apply where the Authority determines that the contract is necessary to respond to a declared emergency which endangers the public health, welfare or safety and there is no time to apply the provisions of § 40-50-410. "Emergency" is that which is defined in § 40-50-220.

(i) Definition of "Resident Worker".

As used in § 40-50-410, the term "Resident Worker" is defined to mean a United States citizen or national; a lawful permanent resident of the United States or valid "green card" holder; a citizen of the Freely Associated States employed in the Commonwealth or attending school pursuant to the Compact of Free Association; an "immediate relative" of

a United States citizen having been granted such lawful status with current and valid status by the CNMI Division of Immigration. A “resident worker” shall not include any person holding alien worker status from the CNMI Department of Labor and/or holding an “entry permit” whose presence in the CNMI is pursuant to his/her employment as a contract or nonresident worker under the Nonresident Workers Act. To the extent that this definition conflicts with any applicable federal or CNMI law or regulation, the conflicting provision shall be severed and the remaining provision or definition shall remain in effect.

Modified, 1 CMC § 3806(d), (e), (f), (g).

History: Adopted 29 Com. Reg. 26691 (Aug. 17, 2007); Proposed 29 Com. Reg. 26436 (Mar. 15, 2007).

Commission Comment: Public Law 15-95 (effective Oct. 4, 2007), codified at 1 CMC § 7404, restricts contract awards for capital improvements, public works, and procurement of goods and services for the amount of \$500,000 or less to business owned by US citizens. PL 15-95 sets forth the specific requirements for local preference in government contract awards. Public Law 15-118 (effective Dec. 14, 2007) amends PL 15-95 to exempt federally funded projects or procurement of goods and services governed by federal regulations that conflict with CNMI local preference requirements. The provisions of PL 15-95 and PL 15-118 supersede this section to the extent that they conflict.

The original publication of this section contained “Commonwealth Ports Authority Airport Rules and Regulations” at the top of the page setting forth the proposed amendment codified in this section. 29 Com. Reg. 26436 (Mar. 15, 2007). The designation of “Airport Rules and Regulations” is an error. The original proposal contains the statement “Amendment to CPA Procurement Regulations,” the substance of the regulation addresses a residency preference for procurement of service contracts and the adoption notice only refers to amendments to CPA Procurement Rules and Regulations. See 29 Com. Reg. 26436 (Mar. 15, 2007) and 29 Com. Reg. 26691 (Aug. 17, 2007). Therefore, the amendment is properly codified in this section, not in NMIAC chapter 40-10.

The Commission inserted “a” before “greater” in subsection (b) to correct a manifest error. In subsection (f), the original mistakenly referenced “Section 3.4 of the Authority’s regulation.” The Commission inserted the proper NMIAC cite (§ 40-50-220) for section 3.5 regarding emergency procurement to correct a manifest error.

Part 500 - Types of Contracts Allowed and Types of Contracts Prohibited

§ 40-50-501 Types of Contracts

(a) Use of a cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited. Further, use of cost-plus-fixed-fee contracts are

prohibited. For reference, cost-plus-fixed-fee contracts are those agreements which provided for payment to the contractor of a negotiated fee that is fixed at the inception of the contract and where the fixed fee does not vary with actual cost but would be adjusted as a result of changes in the work to be performed under the contract.

(b) Authority contracts shall utilize a firm fixed price unless use of a cost reimbursement contract is justified under subsection (c). A cost-reimbursement contract must contain a ceiling which the contractor shall not exceed without the prior written confirmation by the Authority Comptroller and the prior written approval by the Executive Director.

(c) A cost reimbursement contract may be used when the Executive Director determines in a writing which is attached to the contract that:

- (1) Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm fixed price contract;
- (2) Use of a firm fixed price contract could seriously affect the contractor's financial stability or result in payment by the Authority for contingencies that never occur; or
- (3) Use of a cost reimbursement contract is likely to be less costly to the Authority than any other type due to the nature of the work to be performed under the contract.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Commission Comment: In subsection (b), the Commission added a period after "Executive Director" to correct a manifest error.

Part 600 - Inspection and Audit

§ 40-50-601 Right to Inspect Place of Business

The Authority may, at reasonable times, inspect the place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the Authority.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-605 Right to Audit Records

As required by 1 CMC § 7845, the contractor and subcontractor or grantee and subgrantee at all levels shall provide the Public Auditor of the Commonwealth with access to and the right to examine and copy any records, data or papers relevant to an Authority contract or grant for a period of three years after the final payment under the

contract or grant. A clause to this effect shall appear in all Authority contracts and obligations.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Part 700 - Reports and Records

§ 40-50-701 Retention of Procurement Records

(a) All procurement records shall be retained by the Executive Director or Procurement Officer within a designated office or location in hard copy and/or digital format.

(b) The Executive Director or Procurement Officer shall maintain a record listing all contracts made under sole-source procurement or emergency procurement not to exceed five years following the completion of the contract or service. However, after three years the Authority may, at its discretion, retain all procurement records in digital format and dispose of hard copies of such records after five years. The record shall contain:

- (1) Each contractor's name;
- (2) The amount and type of each contract; and
- (3) A listing of the supplies, services or construction procured under each contract.
- (4) Evaluation or inspection reports.

(c) All procurement records, except those designated herein as not subject to disclosure, shall be available to public inspection.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Part 800 - Procurement of Construction Services

§ 40-50-801 Construction Procurement

(a) Invitation for Bids.

(1) Deposit. The Executive Director shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.

(2) Contents. The invitation for bids shall be prepared in accordance with § 40-50-205(b). In addition, the following items shall be included in the invitation for bids:

- (I) Notice to Bidders. General information regarding project;
- (ii) Instructions to Bidders. Information on the preparation of bids, bid security requirements and forms and certifications that must be submitted with the bid;
- (iii) General Conditions. Standard contract clauses governing the performance of work;

- (iv) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed; and
- (v) Technical Specifications. Specifications governing the technical aspects of the work to be performed.

(b) Bid Security.

(1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts where the price is estimated by the contracting officer to exceed \$25,000.00 or when the contracting officer determines it is in the interest of the Authority. Bid security shall be on a bid bond, by certified check, cashiers check or other form acceptable to the Authority.

(2) Amount. Bid security shall be an amount equal to at least ten percent of the amount of the bid or other amount as specified in the invitations for bids.

(3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid as non-responsive.

(c) Contract Performance and Payment Bonds.

When a construction contract is awarded in excess of \$25,000.00, the following bonds or security shall be delivered to the Authority and shall become binding on the parties upon the execution of the contract:

(1) A performance bond satisfactory to the Authority, at a minimum a B+-rated surety up to a Treasury-listed surety company and executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Authority, in an amount equal to one hundred percent of the price specified in the contract; and

(2) A payment (insurance) bond satisfactory to the Authority, with the following minimum ratings by the following rating entities: Rated A- by A.M. Best (Excellent); Aa3 by Moody's (Excellent); or AA- by Standard & Poors (Strong) and executed by a surety company authorized to do business in the Commonwealth or otherwise secured in a manner satisfactory to the Authority, for the protection of all persons supplying labor and material to the contractor or its subcontractors for the performance of the work provided for in the contract. The payment bond shall be in an amount equal to one hundred percent of the price specified in the contract.

(3) The Executive Director shall ensure that the bonding company's pledged assets are sufficient to cover the bond obligation and, prior to the execution of the contract, the selected contractor shall submit the following:

(I) A current license from the bonding company showing that it has authority to issue bonds; and

(ii) A certification from the bonding company that the unencumbered value of its assets (exclusive of all outstanding commitments on other bond obligations) exceed the penal amount of the bond issued to the selected contractor in favor of the Authority;

(iii) A contractor submitting an unacceptable payment or performance bond may be permitted a reasonable time, as determined by the Executive Director, to substitute and

submit an acceptable bond prior to executing a contract. The Executive Director and/or Procurement Officer shall confirm the acceptability of the bonding company from other CNMI Government or Federal Agencies such as the Insurance Division Director of the Department of Commerce or the Federal Aviation Administration. If the selected contractor fails to submit an acceptable payment or performance bond within the deadline or extension allowed by the Executive Director, then the contract shall be deemed canceled as non-responsive and the next responsible bidder selected.

(d) Suits on Payment Bonds; Right to Institute. Every person who has furnished labor or material to the contractor or its subcontractors for the work provided in the contract, in respect of which a payment bond is furnished under this section, and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by such person or material was furnished or supplied by such person for which such claim is made, shall have the right to sue on the payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action for the sum or sums justly due such person; provided, however, that any person having a direct contractual relationship with a subcontractor of the contractor, but no contractual relationship express or implied with the contractor furnishing said payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material upon which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be personally served or served by mailing the same by registered or certified mail, postage prepaid, in an envelope addressed to the contractor at any place the contractor maintains an office or conducts its business.

(e) Suits on Payment Bonds; Where and When Brought. Every suit instituted upon a payment bond shall be brought in a court of competent jurisdiction for the Commonwealth; but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by the person bringing suit. The obligee named in the bond need not be joined as a party in any such suit.

(f) Fiscal Responsibility/ Amendments/ Change Order Approval.

(1) Every contract amendment, modification, change order, or contract price adjustment under any contract/agreement to which the Authority is a party or signatory shall be subject to prior written approval by the Contracting Officer, as reviewed by the Executive Director or his designee on a form prepared by or approved by the Procurement Officer. Further, no contractor nor vendor shall commence with any such amendment, modification, change order, contract/agreement price adjustment without prior approval by the Contracting Officer. Further, any change order which increases the total contract price for any non-Federally or non-FAA-funded projects shall require prior approval by the Board with the concurrence of the Executive Director. Federally-funded projects

which increase the total contract price only require the approval of the granting or applicable federal agency.

(2) A change order shall only be allowed if an increase, decrease, or change in the scope of work is required which was not reasonably foreseeable at the time of the formation of the contract. However, there shall be no change order resulting in an increase in contract cost or time when it is a direct or indirect result of the contractor's inexperience; pricing miscalculations; inefficiency; or incompetence. The Authority, through the Executive Director, may approve a change order should it be in the best interest of the Authority which may include additional consideration for the benefit of the Authority in return for such change order(s).

(3) Change orders on construction and Architect-Engineer and Construction Management contracts which exceed 25 percent of the contract price shall be automatically procured through competitive procedures except when determined by the Executive Director pursuant to subsection (2) above.

(4) No contractor shall continue to perform work nor provide goods or services beyond the terms of the existing contract in the absence of any extension; modification; approval of a new contract; or an approved change order except that the Executive Director has the discretion to extend any contract for up to six (6) months based on circumstances beyond the control of the contracting parties, so long as the price and other terms are not changed in any material way.

(g) Completion of Contracts/ Release of Retention Amount. Every contract for construction or delivery of goods or services may have a retention clause where up to ten (10%) of the total contract price shall be retained subject to a Certificate of Completion. A contract shall be deemed completed when the Executive Director and/or the Authority's Construction Manager or Consultant certifies in writing the completion of the project or contract. Prior to the Certification of Completion, the Authority or its Construction Manager or Project Consultant shall issue a Certification of Substantial Completion certifying that a substantial portion of the contract has been completed except for satisfaction or performance of any corrective work or "punch list." Upon issuance of a Certificate of Substantial Completion the Authority may release up to 5% of the retained funds. Upon issuance of a Certificate of Completion the Authority shall release the remaining 5% within thirty (30) days of submission. Acceptance of the retained funds by the Contractor shall be deemed to be an acceptance of and confirmation of satisfaction of all sums due from the Authority.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-802 Contract Terms and Administration of Contracts

(a) Price. In executing contracts, the Authority shall set the maximum amount that

can be charged under the contract and disallow open-ended contracts, i.e. contracts which do not specify the maximum contract price. Whatever contract type is selected, the Authority shall limit contracts to a fixed price or a ceiling price, and the contractor shall not exceed the price set unless a change order is approved.

(b) **Payment Terms.** Payments shall be made by the Authority only upon the submission of an original certified invoice of services rendered or of work performed with a description of the activity or worked performed and for which payment is requested for that submitted invoice. Generally, a one-time payment shall be made after the official with expenditure authority has certified completion of work or delivery of goods or services. As to any federally-funded Airport Improvement Project (“AIP”), advance payments shall not be allowed.

Other types of payments are as follows:

(1) **Advance Payments.** Advance payments are generally prohibited except when the Executive Director determines, with the concurrence of the Comptroller, that paying the contractor in advance will result in specific advantages to the Authority. However, advance payments shall be limited to not more than 25 percent of the contract price.

(2) **Progress Payments.** Contracts may provide for progress payments to contractors for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the contract amount shall be withheld pending final completion of the contract and an evaluation of the contractor’s performance. The Authority shall make no progress payments on a contract unless it has first been established that the covered work or service has been delivered in accordance with the contract.

(c) The contract shall accurately reflect the actual requirement of the Authority, stating adequately what is to be done or to be delivered to the Authority. For instance, definite quantities shall be stated in the statement of deliverables, unless use of a requirements contract was justified. Contracts with general requirements shall be disallowed. The Authority shall require specific quantities or amounts or deliverables whenever applicable.

(d) The primary responsibility for ensuring compliance in contracting rests with the Executive Director. The Executive Director must comply with requirements for advertising the availability of contracts, soliciting bids from potential contractors, evaluating the bidding contractors, drafting the contracts to conform with applicable requirements, obtaining the appropriate approvals, approving payment for services, and evaluating the contractors upon completion of the contracts.

(e) The oversight responsibility for the Authority’s administration and enforcement of its contracts rests primarily with the Executive Director. He or she shall be responsible for developing standard contract administration procedures to be used by officials with expenditure authority, maintaining a central depository of contractor evaluations, and making the evaluations available to other CNMI Government agencies upon request.

(f) Contract Monitoring.

(1) Contract monitoring shall be accomplished through “production surveillance and reporting.” Production surveillance is a function which the Executive Director uses to determine contractor progress and to identify any factors that may delay performance. It shall involve the Authority’s review and analysis of

(I) Contractor performance plans, schedules, controls, and industrial processes, and

(ii) The contractor’s actual performance under them.

(2) When information on contract performance status is needed, officials with expenditure authority shall require contractors to submit production progress reports. The Executive Director shall review and verify the accuracy of contractor reports and advise the Comptroller and the Board of Directors of any action he plans to take because of any potential or actual delay in performance, including withholding of payments.

(g) The Executive Director shall verify, whenever necessary and practicable, the results of monitoring to the Comptroller and the Board of Directors including the extent of surveillance such as the contractor’s history of contract performance, the contractor’s experience with the contract supplies or services, and the contractor’s financial capability.

(h) Evaluating Results.

(1) Whenever practicable, the Executive Director or the Procurement Officer, in concert with any project managers or consultants for the Authority shall complete, within 30 days of the end of the contract, a post-evaluation of each contractor or a “Contract Close-Out Report” which shall be kept on file for 36 months. The Contract Close-Out Report shall, at a minimum, include the following:

(I) Whether the contracted work or service was completed as specified in the contract, and the reasons for and amount of any cost overruns or delayed completions.

(ii) Whether the contracted work or services met the quality standards specified in the contract.

(iii) Whether the contractor fulfilled all the requirements of the contract, and if not, in what ways the contractor did not fulfill the contract.

(iv) Factors outside the control of the contractor that caused difficulties in contractor performance.

(v) How the contract results and findings will be utilized to meet the goals of the Authority.

(2) The post evaluation of each contractor may be submitted before final payment and close-out of the contract is done.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011).

Part 900 - Protests and Disputes

§ 40-50-901 Protests to the Executive Director

(a) General

(1) Any actual or prospective bidder, proposer, or contractor who asserts a claim or asserts that it has been aggrieved in connection with the solicitation or award of a contract may protest to the Executive Director. The protest shall be received by the Executive Director in writing within ten (10) days after such aggrieved person knows or should have known of the facts giving rise thereto. The Executive Director shall consider all protests or objections to the award of a contract, whether submitted before or after award. The written protest shall state fully the factual and legal grounds for the protest;

(2) Other persons, including bidders, involved in or affected by the protest shall be given notice of the protest and its basis in appropriate cases. The protesting party shall provide such notice and a copy of its protest to all other bidders involved in or affected by the protest and shall file a declaration or proof of service with the Executive Director. Proof of Notice is required by the protesting party to other bidders or proposers within three (3) calendar days of filing its protest. These persons shall also be advised that they may submit their views and relevant information to the Executive Director within. Normally, the time specified will be ten (10) calendar days;

(3) The Executive Director shall decide the protest within thirty (30) calendar days after all interested parties have submitted their views unless he certifies that the complexity of the matter requires a longer time, in which event he shall specify the appropriate longer time. If the Executive Director fails to render a decision or determination within such period, the protesting party may file its appeal to the Appeal Committee of the Authority's Board of Director by filing such Notice of Appeal with the Chairman through the Board Secretary at the Authority Administration Section, Saipan International Airport. The submission of views may include any factual statements; briefs; memoranda; declarations; and other information that the Executive Director or any party may submit which is relevant and necessary for the determination of the protest;

(4) When a protest, before or after award, has been appealed to the Appeal Committee, as provided in these procedures, and the Executive Director shall submit a report, and the Executive Director should include with his report a copy of:

(i) The protest;

(ii) The bid submitted by the protesting bidder and a copy of the bid of the bidder who is being considered for award, or whose bid is being protested;

(iii) The solicitation, including the specifications on portions relevant to the protest;

(iv) The abstract of offers or relevant portions;

(v) Any other documents that are relevant to the protest; and

(vi) The Executive Director's signed statement setting forth findings, actions, and recommendations and any additional evidence or information deemed necessary in determining the validity of the protest. The statement shall be fully responsive to the allegation of the protest. If the award was made after receipt of the protest, the Executive Director's report will include the determination prescribed in subsection (b)(3) below. The foregoing information submitted by the Executive Director shall be considered the complete Administrative Record on appeal to the Appeal Committee unless the Appeal Committee supplements the record with additional testimony or evidence.

(5) Since timely action on protests is essential, they should be handled on a priority basis. Upon receipt of notice that an appeal from the Executive Director's decision has

been taken to the Appeal Committee, the Executive Director shall immediately begin compiling the information necessary for a report as provided in subsection (a)(4) above.

(b) Protests Before Award

(1) When a proper protest against the making of an award is received, the award shall be withheld pending disposition of the protest. The bidders whose bids might become eligible for award shall be informed of the protest. In addition, those bidders shall be requested, before expiration of the time for acceptance of their bids, to extend the time for acceptance to avoid the need for re-advertisement. In the event of failure to obtain such extensions of bids, consideration shall be given to proceeding with an award under subsection (b)(2) below.

(2) When a written protest is received, award shall not be made until the matter is resolved, unless the Executive Director determines that:

(I) The materials and services to be contracted for are urgently required;

(ii) Delivery or performance will be unduly delayed by failure to make award promptly; or

(iii) A prompt award will be advantageous to the Authority.

(3) If award is made under subsection (b)(2) above, the Executive Director shall document the file to explain the need for an immediate award. The Executive Director also shall give written notice to the protester and others concerned of the decision to proceed with the award.

(c) Protests After Award

Although persons involved in or affected by the filing of a protest after award may be limited, in addition to the Executive Director, at least the contractor shall be furnished the notice of protest and its basis in accordance with subsection (a)(2) above. When it appears likely that an award may be invalidated and a delay in receiving the supplies or services is not prejudicial to the Authority's interest, the Executive Director should consider seeking a mutual agreement with the contractor to suspend performance on a no-cost basis.

(d) Computation of Time

(1) Except as otherwise specified, all "days" referred to in this part are deemed to be working days of the Authority. The term "file" or "submit" except as otherwise provided refers to the date of transmission.

(2) In computing any period of time prescribed or allowed by these procedures, the day of the act or event from which the designated period of time begins to run shall not be included.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-905 Appeals of Executive Director's Decision to the Board

(a) Jurisdiction; Exhaustion of Remedies. A written appeal to the Appeal Committee from a decision by the Executive Director may be taken provided that the party taking the appeal has first submitted a written protest to the Executive Director as provided in § 40-50-901, and the Executive Director has denied the protest or has failed to act on the protest within the time provided for in section § 40-50-901(a)(3) above.

(b) Form of Appeal. No particular form of pleading is required for filing an appeal to the Appeal Committee. The appeal shall, however:

- (1) Include the name and address of the appellant;
- (2) Identify the name and number of the solicitation or contract;
- (3) Contain a concise, logically arranged, and direct statement of the grounds for appeal; and
- (4) Specifically request a ruling by the Appeal Committee.

(c) Time for Filing Appeal. An appeal from the Executive Director's decision must be received by the Appeal Committee not later than ten calendar days after the appellant receives the decision of the Executive Director, or, in the event that the Executive Director has not decided the protest within ten days from the date that he should have decided the protest pursuant to section § 40-50-901(a)(3) above. Any appeal received after these time limits shall not be considered by the Appeal Committee unless good cause is shown or unless the Appeal Committee determines that the appeal presents issues significant to procurement practices that are not outweighed by the detriment to the Authority should the appeal be considered.

(d) Notice of Protest, Submission of Executive Director's Report and Time for Filing of Comments on Report.

(1) The Chairman of the Appeal Committee, immediately upon appointment by the Board Chairman, shall notify the Executive Director in writing within one day of the receipt of an appeal, requesting the Executive Director to give notice of the appeal to the contractor if award has been made or, if no award has been made, to all bidders or proposers who appear to have a substantial and reasonable prospect of receiving an award if the appeal is denied. The Executive Director shall be requested to furnish in accordance with § 40-50-901(a)(2) copies of the protest and appeal documents to such parties with instructions to communicate further directly with the Appeal Committee.

(2) The Appeal Committee shall request the Executive Director to submit a complete report on the appeal to the Appeal Committee as expeditiously as possible (generally within 30 calendar days) in accordance with § 40-50-901(a)(4) and to furnish a copy of the report to the appellant and other interested parties as defined in § 40-50-901(a)(2).

(3) Comments on the Executive Director's report shall be filed by the protesting party and any interested party with the Appeal Committee within ten calendar days after the Appeal Committee's receipt of the report, with a copy to other interested parties. Any rebuttal an appellant or interested party may care to make shall be filed with the Appeal Committee within five days after receipt of the comments to which rebuttal is directed, with a copy to the appellant, and interested parties, as the case may be.

(4) The failure of an appellant or any interested party to comply with the time limits stated in this section may result in resolution of the appeal without consideration of the comments untimely filed.

(e) Withholding of Award. When an appeal has been filed before award, the Executive Director will not make an award prior to resolution of the protest except as provided in this section. In the event the Executive Director determines that award is to be made during the pendency of an appeal, the Executive Director shall notify the Appeal Committee.

(f) Furnishing of Information on Protests. The Appeal Committee shall, upon request, make available to any interested party information bearing on the substance of the appeal which has been submitted by interested parties, except to the extent that withholding of information is permitted or required by law or regulation. Any comments thereon shall be submitted within a maximum of ten calendar days.

(g) Time for Submission of Additional Information. Any additional information requested by the Appeal Committee from the appellant or interested parties shall be submitted no later than five calendar days after the receipt of such request. If it is necessary to obtain additional information from the Executive Director, the Appeal Committee will request that such information be furnished as expeditiously as possible.

(h) Conference.

(1) A conference on the merits of the appeal with the Appeal Committee may be held at the request of the appellant, any other interested party, or the Executive Director. A request for a conference should be made prior to the expiration of the time period allowed for filing comments on the agency report. Except in unusual circumstances, requests for a conference received after such time will not be honored. The Appeal Committee will determine whether a conference is necessary for resolution of the appeal and this determination is not subject to reconsideration.

(2) Conference normally will be held prior to expiration of the period allowed for filing comments on the agency report. All interested parties shall be invited to attend the conference. Ordinarily, only one conference will be held on an appeal.

(3) Any written comments to be submitted and as deemed appropriate by the Appeal Committee as a result of the conference must be received by the Appeal Committee within five calendar days of the date on which the conference was held.

(4) Time for Decision; Notice of Decision. The Appeal Committee shall, if possible, issue a decision on the appeal within thirty (30) calendar days after all information necessary for the resolution of the appeal has been received. A copy of the decision shall immediately be mailed or otherwise transmitted to the appellant, other participating parties, and the Executive Director.

(I) Request for Reconsideration.

(1) Reconsideration of a decision of the Appeal Committee may be requested by the appellant, any interested party who submitted comments during consideration of the protest, and the Executive Director. The request for reconsideration shall contain a

detailed statement of the factual and legal grounds upon which reversal or modification is deemed warranted, specifying any errors of law made or information not previously considered.

(2) Request for reconsideration of a decision of the Appeal Committee shall be filed not later than ten calendar days after the decision. The term “filed” as used in this section means receipt by the Appeal Committee. There shall be no further hearing nor conference on any request for reconsideration and the Appeal Committee shall decide on the request for reconsideration within five (5) calendar days.

(3) A request for reconsideration shall be subject to these bid protest procedures consistent with the need for prompt resolution of the matter.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-910 Remedies

(a) Remedies Prior to Award. If prior to award the Executive Director or the Appeal Committee determines that a solicitation or proposed award of a contract is in violation of law or regulation, then the solicitation or proposed award shall be:

- (1) Cancelled; or
- (2) Revised to comply with law or regulation.

(b) Remedies After an Award. If after an award the Executive Director or the Appeal Committee determines that a solicitation or award of a contract is in violation of law or regulation, then:

- (1) If the person awarded the contract has not acted fraudulently or in bad faith:
 - (I) The contract may be ratified and affirmed, provided it is determined that doing so is in the best interests of the Authority; or
 - (ii) The contract may be terminated and the person awarded the contract shall be compensated for the actual expenses reasonably incurred under the contract;
- (2) If the person awarded the contract has acted fraudulently or in bad faith:
 - (I) The contract may be declared null and void; or
 - (ii) The contract may be ratified and affirmed if such action is in the best interests of the Authority, without prejudice to the Authority’s rights to such damages as may be appropriate.

(c) Finality of Findings of Fact by the Appeal Committee. A determination of an issue of fact by the Appeal Committee under this part shall be final and conclusive unless arbitrary, capricious, fraudulent, or clearly erroneous. Any aggrieved party shall thereafter file its petition to review the Authority’s determination as an agency decision under the CNMI Administrative Procedure Act and applicable rules of administrative procedure with the CNMI Superior Court.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-915 Effective Date

All protests as to the manner of bidding, the failure to properly award a bid, the failure of Authority to contract with a business after bidding, or the cancellation of bids which may or may not be the subject of lawsuit but have not reached final judgment as of the effective date of this chapter shall be heard in accordance with this part upon the request of the actual or prospective bidder, proposer, or contractor who is aggrieved.

Modified, 1 CMC § 3806(d).

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-920 Disputes

(a) Any dispute between the Authority and a contractor relating to the performance, interpretation of a compensation due under a contract, which is the subject of this chapter, must be filed in writing with the Executive Director within ten calendar days after knowledge of the facts surrounding the dispute.

(b) When a claim by or against a contractor cannot be satisfied or settled by mutual agreement and a decision on the dispute is necessary, the Executive Director shall review the facts pertinent to the dispute, secure necessary legal assistance and prepare a written description that shall include:

- (1) Description of the dispute;
- (2) Reference to pertinent contract terms;
- (3) Statement of the factual areas of disagreement or agreement; and
- (4) Statement of the decision as to the factual areas of disagreement and conclusion of the dispute with any supporting rationale.

(c) Appeals. The Appeal Committee shall review and render a decision on an appeal from an adverse decision timely taken by a contractor. The Appeal Committee may require a hearing or that information be submitted on the record, in his discretion. The Appeal Committee may affirm, reverse or modify the decision or remand it for further consideration.

(d) Duty to Continue Performance. A contractor that has a dispute pending before the Executive Director or an appeal before the Appeal Committee must continue to perform according to the terms of the contract and failure to so continue shall be deemed to be a material breach of the contract unless he obtains a waiver of this provision by the Board.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-925 Appeal Committee

The Appeal Committee is comprised of three (3) members of the Board of Directors appointed by the Chairman to hear any appeal under these provisions. There shall be an Appeal Committee Chairman selected from the three board members by their agreement or selection by vote. The Chairman of the Authority's Board of Directors shall not be a member of the Appeal Committee.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

Part 1000 - Ethics in Contracting

§ 40-50-1001 Definitions of Terms

- (a) "Confidential information" means any information which is available to an employee only because of the employee's status as an employee of the Authority and is not a matter of public knowledge or available to the public on request.
- (b) "Conspicuously" means written in such special or distinctive form, print or manner that a reasonable person against whom it is to operate ought to have noticed it.
- (c) "Direct or indirect participation" means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.
- (d) "Financial interest" means:
- (1) Ownership of any interest or involvement in any relationship from which or as a result of which, a person within the past year has received or is presently or in the future entitled to receive compensation; or
 - (2) Holding a position in a business such as an officer, director, trustee, partner, employee or the like or holding any position of management.
- (e) "Gratuity" means a payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (f) "Immediate family" means spouse, children, parents, grandparents; siblings; common-law partners; and/or household members.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1005 Policy

Authority, Board members and in contracting, employees shall discharge their duties impartially so as to:

- (a) Insure fair competitive access to Authority procurement by reasonable contractors; and
- (b) Conduct themselves in a manner as to foster public confidence in the integrity of the Authority.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1010 General Standards

- (a) Board Members and Employees. Any attempt to realize personal gain by conduct inconsistent with the proper discharge of the Board members or employee's duties is a breach of a public trust. In order to fulfill this ethical standard, Board members and employees must meet the requirements of this chapter.
- (b) Contractors. Any effort to influence any Authority Board members or employee to breach the standards of ethical conduct set forth in this chapter is also a breach of ethical standards.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1015 No Financial Interests

- (a) No Board member shall have any financial interest, direct or indirect, in any contract awarded by the Board. This provision shall not apply to contracts awarded to a corporation in which such Board member owns less than five percent of the entire capital stock. To this end, the Authority shall require that corporate bidders submit the names of all of its stockholders and the percentage of their ownership.
- (b)(1) No Board member, officer, or employee of the Authority, either personally or as agent for anyone else, shall benefit directly or indirectly by reason of any sale, purchase, contract or transaction entered into by the Authority.
- (2) Any person who, directly or indirectly, becomes interested in any such sale,

purchase, contract or transaction while serving as a Board member, officer, or employee of the Authority shall be guilty of a felony. Upon the filing of an information of such felony, the Board in its judgment may suspend the services of the charged person pending final determination. Immediately upon conviction of a violation thereof, such person shall forfeit his office or position. Upon conviction thereof, he shall be punished by a fine not to exceed \$2,000.00 or by confinement in jail for not more than one year, or both.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1020 Gratuities and Kickbacks

(a) **Gratuities.** It shall be a breach of ethical standards for any person to offer, give or agree to give any Board member or employee to solicit, demand, accept or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation of any part of a program requirement or a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract or to any solicitation or proposal therefore.

(b) **Kickbacks.** It shall be a breach of ethical standards for any payment, gratuity or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith as an inducement for the award of a subcontractor or order.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1025 Prohibition Against Contingent Fees

(a) **Contingent Fees.** It shall be a breach of ethical standards for a person to be retained or to retain a person to solicit or secure Authority contracts upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.

(b) **Representation of Contractor.** Every person, before being awarded an Authority contract, shall represent, in writing that such person has not retained anyone in violation of this section. Failure to do so constitutes a breach of ethical standards.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1030 Contract Clauses

The prohibitions against gratuities, kickbacks and against contingent fees shall be conspicuously set forth in every contract and solicitation therefore.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1035 Restrictions on Employment of Present and Former Board Members or Employees

(a) Present Board Members or Employees. It shall be a breach of ethical standards for any Board member or employee who is participating directly or indirectly in the procurement process to become or be while such a Board member or employee, the employee of any person contracting with the Authority.

(b) Restrictions on Former Board Members or Employees in Matters Connected with Their Former Duties. Permanent disqualification of former Board member or employee personally involved in a particular matter. It shall be a breach of ethical standards for any former Board member or employee knowingly to act as a principal or as an agent for anyone other than the Authority, in connection with any of the following: a judicial or other proceeding, an application, request for a ruling or other determination; contract; claim; or charge or controversy in which the Board member or employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation or otherwise while a Board member or employee, where the Authority is a party or has a direct or substantial interest.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1040 Use of Confidential Information

It shall be a breach of ethical standards for any Board member or employee or former Board member or employee to knowingly use confidential information for actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1045 Collusion by Bidders

Collusion or secret agreements between bidders for the purpose of securing an advantage to the bidders against the Authority in the awarding of contracts is prohibited. The Board may declare the contract void if it finds sufficient evidence after a contract has been let that the contract was obtained by a bidder or bidders by reason of collusive or secret agreement among the bidders to the disadvantage of the Authority.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

§ 40-50-1050 Authority to Debar or Suspend

(a) Authority. After reasonable notice to the person involved and reasonable opportunity for the person to be heard under the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the Executive Director after consultation with the Board and the Attorney, shall have authority to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. The Executive Director, after consultation with the Board and the Attorney, shall have authority to suspend a person from consideration for award of contracts if there is cause for suspension. The suspension shall not be for a period exceeding three months.

(b) Causes for Debarment or Suspension. The causes for debarment or suspension include the following:

(1) Conviction for commission of a criminal offense in an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(2) Conviction under Commonwealth or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, violation of the Consumer Protection Act (4 CMC §§ 5101, et seq.), violation of any unfair business practices as prescribed by 4 CMC § 5202, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects its responsibility as a government contractor;

(3) Violation of contract provisions, as set forth below, of a character which is regarded by the Executive Director to be so serious as to justify debarment action:

(I) Deliberate failure without good cause to perform in accordance with the specifications within the time limits provided in the contract; or

(ii) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered a basis for debarment;

(4) Any other cause that the Executive Director determines to be so serious and compelling as to effect responsibility as an Authority contractor, including debarment by another governmental entity; and

(5) For violation of any of the ethical standards set forth in part 1000.

(c) Decision. The Executive Director shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken.

(d) Notice of Decision. A copy of the decision shall be mailed or otherwise furnished immediately to the debarred or suspended person.

History: Adopted 33 CR 32150 (Dec. 29, 2011); Proposed 33 Com. Reg. 31931 (Sept. 26, 2011); Adopted 10 Com. Reg. 5716 (Oct. 15, 1988); Proposed 10 Com. Reg. 5625 (Aug. 15, 1988).

CHAPTER 40-60

TEMPORARY LAND USE PERMITS RULES AND REGULATIONS

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- § 40-50-501 Types of Contracts

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- § 40-50-1001 Definitions of Terms
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<p>§ 40-50-1035 Restrictions on Employment of Present and Former Board Members or Employees</p> <p>§ 40-50-1040 Use of Confidential Information</p> <p>§ 40-50-1045 Collusion by Bidders</p>	<p>§ 40-50-1050 Authority to Debar or Suspend</p>
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Chapter Authority: 2 CMC § 2122(j).

Chapter History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Commission Comment: For the history of the regulatory authority of the Commonwealth Ports Authority, see the general comment to chapter 40-10.

Part 001 - General Provisions

§ 40-60-001 Authority

(a) The regulations in this chapter are hereby promulgated by the Commonwealth Ports Authority (“CPA”) in accordance with 2 CMC § 2122(j) and shall have the force and effect of law.

(b) The CPA has the duty and responsibility to develop, maintain, operate and manage all air and sea ports within the Commonwealth of the Northern Mariana Islands pursuant to 2 CMC § 2122(a). CPA has certain airport lands under its jurisdiction and ownership, which are being reserved for future port development. These lands are being maintained as unimproved property, but may be used for farming, grazing or other activities so that they remain in a clean and unobstructive* state. CPA finds that such lands would best be maintained by farmers and ranchers willing to clean and maintain the lands in return for short-term farming, grazing or short-term noncommercial/commercial purposes under the terms of this chapter and the temporary permit issued. The activities permitted under this chapter shall be deemed “portconnected” pursuant to the requirements of 2 CMC § 2122(e) and as a matter of CPA policy.

*So in original.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-005 Purpose of the Regulations

(a) To establish a uniform land use policy regarding the application, review, and award of agricultural, grazing, and short-term non-commercial or commercial permits to use CPA lands without erecting any permanent improvement thereon.

(b) To establish uniform terms and conditions for the use of CPA lands pursuant to temporary land use permits.

(c) To ensure that the award of temporary land use permits do not violate any applicable local or federal law, regulation, or policy, and that the mission and best interest of the CPA are carried out and promoted.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-010 Applicability

This chapter shall apply to all agricultural, grazing and other short-term non-commercial or commercial permits, subject to cancellation at the discretion of the CPA, with or without cause, as provided for under this chapter. This chapter shall not apply to commercial leases and concessions with a term of more than one year, or to other commercial arrangement related to CPA operation of airport and seaport properties.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-015 Definitions

(a) “Application” or “renewal application” means the temporary land use permit application made on form provided by the Authority and available to all permit applicants, existing or prospective.

(b) “Authority” or “CPA” means the Commonwealth Ports Authority.

(c) “Board” or “Board of Directors” means the Board of Directors of the Commonwealth Ports Authority.

(d) “CPA lands,” for purposes of this chapter means any unimproved airport land owned by or that is under the control of the Authority and which has been designated by CPA for agricultural, grazing or short-term noncommercial or commercial use.

(e) “Executive Director” means the Executive Director of the CPA or his designee.

(f) “Permanent improvement” means any permanent or fixed structure, constructed of materials generally associated with permanency such as concrete, hollow block or

metal, and incapable of being dismantled or removed upon expiration of the permit except through demolition or destruction of the improvement.

(g) “Permit” means the legal instrument issued by the Authority authorizing the agricultural, grazing, short-term commercial or non-commercial use of CPA lands and issued pursuant to this chapter, or were issued prior to this chapter but are now made subject to this chapter.

(h) “Permittee” means the person issued a permit to use CPA lands, pursuant to this chapter and the terms and conditions of the permit.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Commission Comment: In subsection (d), the Commission changed “or is under” to “or that is under” to correct a manifest error.

Part 100 - Cancellation of Existing Permit and Application for New Permit

§ 40-60-101 Cancellation of Existing Permits

All existing permits for the use of CPA lands issued prior to the adoption of this chapter shall be canceled by the Authority no later than ninety days after the effective date of this chapter. Any existing permittee of CPA lands who fails to file an application for a new permit as set forth in § 40-60-105 below shall be deemed a trespasser after such period, and CPA may take any action, legal or equitable, to remove any unlawful occupant who does not have a valid permit to use CPA lands.

Modified, 1 CMC § 3806(c), (d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-105 Application for New Permit

Any existing permittee who wishes to obtain a new permit to use CPA land as a result of the proposed termination of an existing permit, must file a completed application for a new permit with the Executive Director within ninety days after the effective date of this chapter. Such person shall obtain an application form from the Authority. Any existing permittee making an application may be allowed to continue the use and occupancy of CPA land described by the canceled permit, pending the final decision of the Authority on the application for a new permit.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Part 200 - Application for a New Permit

§ 40-60-201 Application Form

The Executive Director shall make available uniform application forms for agricultural, grazing, short-term commercial and non-commercial use of CPA lands. Application forms shall be available at the Authority's office at the Saipan International Airport on Saipan and at the office of the airport manager on Tinian and Rota.

Modified, 1 CMC § 3806(f).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-205 Application Fee

A non-refundable application fee of twenty-five dollars shall be assessed for each application. The fee shall be used to defray the cost of processing, review, and other administrative costs.

Modified, 1 CMC § 3806(e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-210 Renewal

Any permittee who wishes to renew his permit to use CPA land shall file a new application with the Authority no later than sixty days prior to the expiration of the existing permit. All applications for renewal shall be accompanied with the standard application fee and any rental payment due and payable the Authority. No permit may be renewed without payment of the application fee and any outstanding rental due under the existing permit. Any permittee submitting an application for renewal under this section shall continue to use the CPA land he is occupying pending the final decision of the Authority on his application, provided that he pays all rental as the same become due and payable.

Modified, 1 CMC § 3806(e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-215 Permit Application for Newly Designated CPA Lands

(a) The Authority may designate, for temporary land use permits, other idle lands under its ownership or control and which are being reserved for future port expansion or development by the Authority. The Authority may designate such property, as appropriate, for temporary use under permits issued pursuant to this chapter.

(b) In the event the Authority designates for permit issuance any CPA lands, it shall publish a notice of intention to offer for temporary use permitting such CPA lands and shall prescribe in the notice the method for making application. Publication by notice in a newspaper of general circulation in the Commonwealth at least twice within thirty days of CPA designation shall be made by the Authority.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-220 Review and Award of Permit

(a) The Authority's Airport Facilities Committee shall review each application for a temporary permit to use CPA land. It may, as it deems necessary, provide for a public hearing on the permit applications for newly designated CPA land. If there is a hearing, each applicant shall be entitled to present testimony concerning his/her application and why his/her permit application, if granted, will serve the best interests of the Authority. The Authority may reject any and all application at its sole discretion. Notice of the award or denial of a permit application and the basis for the award or denial shall be given to all applicants.

(b) Where there are several permit applications for the same parcel of land, the Authority's Airport Facilities Committee will base its selection on the applicant's past experience and ability to successfully carry on the farming or cattle grazing activity, the applicant's relative need to support himself and his family, and the applicant's ability to comply with the permit terms and conditions and this chapter. Where all of the applicants appear to qualify for a permit, the Committee shall select the successful applicant by drawing of lots.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-225 Appeal of Rejection of Application

Any unsuccessful permit applicant may appeal the decision of the Authority denying his application as provided in § 40-60-370.

Modified, 1 CMC § 3806(c).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-230 Restrictions on Who May Apply

No director, officer, or employee of the CPA, either personally or as an agent of another shall be permitted to apply or benefit directly or indirectly from a permit issued under this chapter. Any application submitted by a director, officer, employee or an immediate family member shall be summarily rejected. The restrictions imposed by 2 CMC § 2131 and the Ethics in Government Law shall apply.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Part 300 - Minimum Terms and Conditions of Permits

§ 40-60-301 Uniform Permit

The Authority shall prepare a uniform permit for all permittees. Such permit shall incorporate the terms and conditions of the regulations in this chapter, in addition to other pertinent terms and conditions.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-305 Term of Permit

All permits issued under this chapter shall be for a period not to exceed one year.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-310 Other Conditions of Renewal

Any renewal application shall be subject to approval by the Executive Director, after payment of all fees and rentals, as set forth under § 40-60-210. Any permittee who has complied with the terms of his permit throughout the duration of the permit and is

seeking renewal of his permit shall be given priority over other applicants unless the Authority in its best judgment determines otherwise. Any decision to reject a permittee's renewal application and to award a new permit to another applicant must be for good and justifiable reasons and shall not be based on arbitrary or capricious reasons.

Modified, 1 CMC § 3806(c).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-315 Rentals

Rental rates shall be assessed on a per acreage basis, as stated below. For any land use not stated below, the Authority may impose a different rate, provided it is reasonable.

- (a) For non-commercial cattle grazing: \$30.00 minimum per hectare per year.
- (b) For non-commercial agriculture (i.e. subsistence farming): \$30.00 minimum per hectare per year.
- (c) For short-term commercial agriculture: \$30.00 minimum per hectare per year, plus three percent of that portion of permittee's quarterly business gross revenues attributable to the gross income received by permittee from commercial agricultural activity on CPA land covered by the permit. Permittee shall submit a copy of his quarterly BGRT within thirty days after the end of each quarter along with any payment due. Permittee shall, at all times, keep complete books and records evidencing all commercial transactions conducted on the permitted land.
- (d) For short-term plant nursery activity: \$30.00 minimum per hectare per year plus three percent of that portion of permittee's quarterly business gross revenues attributable to the gross income received by permittee from commercial agricultural activity on CPA land covered by the permit. Permittee shall submit a copy of his quarterly BGRT within thirty days after the end of each quarter along with any payment due. Permittee shall, at all times, keep complete books and records evidencing all commercial transactions conducted on the permitted land.
- (e) For other uses (including the use of land by government agencies and non-profit organizations): All applications for use of CPA lands other than for the above purposes shall require approval of the Board of Directors; and the Authority may use any other method to establish rental for such use as it deems fair and would further its best interest and the interest of people of the Commonwealth.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-320 Security Deposit

Authority shall require each permittee to post a security deposit of \$250.00, refundable without interest upon permit expiration on the condition that the permittee has restored the land to the satisfaction of the Authority and permittee has vacated the premises and has paid all due rentals, fees and charges.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-325 Construction of Improvements

(a) Permittee may construct temporary structures only (i.e. non-permanent improvements) on CPA land, only upon obtaining the prior written consent of the Authority, and under the following terms and conditions:

(1) Permittee shall not construct any permanent improvement on the land, either concrete, metal, or otherwise. The determination of what is a permanent improvement shall lie with CPA alone.

(2) Prior to construction of any temporary improvement on CPA land, a written request describing the proposed improvement and specifications thereto must be approved in advance in writing by Executive Director.

(3) Any temporary improvement placed on CPA land shall not create a lien on the land.

(4) Upon approval by the Authority, a permittee must obtain any required permits before using the land, from pertinent government agencies, including but not limited to: the Division of Environmental Quality, Department of Lands and Natural Resources, Coastal Resources Management, or Historic Preservation Office, and so forth.

(5) Upon expiration of the term of the permit, permittee shall remove all the improvements placed thereon, at his sole expense.

(b) The permittee shall not have any right to remain on CPA lands after the expiration or termination of his or her permit; and the Authority shall have the right to remove any improvement, fixture and other property of permittee and dispose of such as it sees fit. In exercising this right, the Authority shall:

(1) Not be liable for damages to or loss of any property removed;

(2) Have the right to recover costs of removal and/or storage or disposal; and,

(3) Recover any attorney's fees or other costs incurred as a result.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-330 Restrictions on Use

The following restrictions shall apply to the use of CPA land covered by a temporary use permit:

- (a) No employee barracks shall be constructed on CPA land.
- (b) No residential structure shall be constructed on CPA land.
- (c) No extension of any business other than agricultural/nursery shall be made, unless specifically approved by the Board of Directors and specifically identified in writing as a variance from these restrictions.
- (d) No mining, drilling, extraction of land, mineral, or soil shall be made on CPA land.
- (e) Permittee shall not use CPA land as a waste deposit or landfill.
- (f) Permittee shall not store explosives, dangerous chemicals, flammable and inflammable liquids or other hazardous materials on CPA land.
- (g) Permittee shall not conduct any hazardous activities on CPA lands.
- (h) No permit will be issued for CPA lands within 100 feet from any port perimeter fence.
- (i) Permittee shall not transplant any permanent trees growing on CPA land, such as coconut trees, fruit trees, breadfruit, etc., except upon the prior written approval of the Authority.

Modified, 1 CMC § 3806(g).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Commission Comment: In subsection (e), the Commission changed “waste depositor or landfill” to “waste deposit or landfill” to correct a manifest error.

§ 40-60-335 Monitoring for Compliance

To insure that this chapter and the terms and conditions imposed by the land use permit are complied with, CPA’s Lease Enforcement and Compliance Office shall conduct regular visual inspections of the permitted premises and take such measures or actions needed to correct any violation of the permit terms and conditions and this chapter. Unannounced inspections shall be conducted and CPA shall not be prohibited by the permittee or others acting for or on behalf of the permittee from conducting such inspections. The CPA Comptroller’s Office shall monitor and enforce all financial matters relating to the permit issued, including the collection of unpaid fees and charges.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-340 Proper Maintenance of CPA Lands

All permittees shall properly maintain CPA lands at all times. A permittee shall not commit any waste of the property nor shall he remove any existing trees, or vegetation other than underbrush, shrubs and tangantangan. A permittee shall not allow litter, garbage or other refuse to accumulate on the property or allow the property to become an eyesore. Any property of the Authority which is damaged or destroyed by permittee shall be repaired or replaced by permittee.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-345 Utilities

All electrical, water, telephone or other utility services may be installed but at permittee's expense and in permittee's own name. Permittee shall pay any and all utility bills and invoices as they come due. No utility provider shall be allowed to place any lien or encumbrance on CPA lands or any fixtures attached thereto as a result of a permittee's failure to pay any sums due for such utility services.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-350 Permit Not Assignable

No permit issued under this chapter shall be assignable to any third party, for any reason. Any permit assigned or transferred to a person other than the named permittee shall be immediately canceled and terminated by the Authority.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-355 Waiver of Aircraft Noise and Pollution Claims

Any person given a permit to use CPA lands under this chapter shall be deemed to have waived any claim or cause of action for aircraft nuisance, noise pollution, or other nuisance or pollution, for damages suffered for the loss of, or injury to, any crop or livestock against CPA, any airline, or aircraft operator conducting business or operating at any airport under the Authority's control.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-360 Termination

(a) Any permit issued pursuant to this chapter shall be terminable by either party, without cause.

(b) A party may terminate a permit, to be effective forty-five days after written notice to the other party.

(c) Authority shall not be liable to the permittee for damages suffered due to any early termination of the permit.

(d) Any permit issued hereunder shall include a waiver of any claim for assistance which might be afforded under the Federal Relocation Assistance Act.

(e) Upon termination, permittee shall be solely responsible for removing any temporary improvements within the time allowed in the notice of termination.

(f) Upon termination, permittee shall be responsible for restoring the land to the satisfaction of the Authority.

(1) If permittee fails to restore CPA land to the satisfaction of the Authority, the Authority will make such restoration and deduct any and all costs and expenses incurred from the security deposit.

(2) If the security deposit is insufficient to pay such expenses and costs, permittee shall reimburse the Authority for the additional expenses incurred by the Authority.

(3) In the event the permittee fails to reimburse the Authority for any costs and expenses incurred, the Authority may file suit for damages to recover such costs and expenses. If successful in such suit, it shall be entitled to recover court costs and attorneys fees incurred.

Modified, 1 CMC § 3806(e).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-365 Indemnification and Release of Liability

Permittee shall indemnify and hold the Authority, directors, officers, employees, and agents free and harmless from any and all liability for any damage to persons or property arising from permittee's activities on CPA land.

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-370 Right to Appeal

Permittee shall have the right to appeal the denial of any permit application, denial of renewal, permit termination, or other grievance within ten days after he knows or should have known the facts giving rise to such grievance. He may also request an extension of time to vacate CPA lands upon the termination of any permit. All appeals and requests for extension of time shall be filed in writing specifying the grounds therefore and addressed to the Executive Director. The CPA Board's appeals panel consisting of three Board members appointed by the Chairman shall consider and hear the appeal taken. The panel's decision shall be final and unreviewable.

Modified, 1 CMC § 3806(f).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-375 Unilateral Modification

The Authority shall have the right to unilaterally amend any of the terms or conditions of any permit issued under this chapter, including any rates and charges stated therein, whether or not any such amendments conform to this chapter, in order to conform with any applicable federal regulations or directives, or the order of any federal agency including but not limited to the Federal Aviation Administration and the U.S. Department of Transportation.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-380 Attorney's Fees

In the event the Authority files any civil action with a court of competent jurisdiction to enforce any term or provision of this chapter or any permit issued hereunder, or for breach of any such term or condition, permittee shall pay Authority reasonable attorney's fees and court costs, if Authority is successful.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

Part 400 - Miscellaneous Provisions

§ 40-60-401 Applicable Laws

This chapter and any permit issued hereunder shall be interpreted in accordance with the laws of the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).

§ 40-60-405 Severability

If any of the provisions of this chapter or the terms and conditions of any permit issued hereunder is held invalid or unenforceable by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.

Modified, 1 CMC § 3806(d).

History: Adopted 20 Com. Reg. 16406 (Dec. 15, 1998); Proposed 20 Com. Reg. 16137 (Sept. 15, 1998).