

**CHAPTER 155-10
BUILDING SAFETY DIVISION**

**SUBCHAPTER 155-10.1
BUILDING SAFETY CODE RULES AND REGULATIONS**

Part 001	General Provisions	Meetings
§ 155-10.1-001	Authority	
§ 155-10.1-005	Existing Structures	Part 200
§ 155-10.1-010	Compliance Required	Inspection, Fees, and
§ 155-10.1-015	Administration and	Compliance
Enforcement		§ 155-10.1-201
§ 155-10.1-020	Cooperation from	Inspection
Public Agencies and	Application to Public	§ 155-10.1-205
Buildings		Tests as Proof of
§ 155-10.1-025	Purpose; Rules and	Compliance
Regulations		§ 155-10.1-210
§ 155-10.1-027	Purpose; Energy and	Prefabricated
Energy Conservation		Buildings
§ 155-10.1-030	Discretion to Adapt to	§ 155-10.1-215
Circumstances		Stoppage of Work for
§ 155-10.1-035	New or Alternate	Non Compliance
Materials		§ 155-10.1-220
§ 155-10.1-040	Prohibition	Revocation Permit
		§ 155-10.1-225
		Fees
		§ 155-10.1-230
		Cessation in
		Construction
Part 100	Building Permit	Part 300
Application and Review Process		Certificates of Occupancy
§ 155-10.1-101	Application for	§ 155-10.1-301
Permit		Certificate of
§ 155-10.1-105	Application	Occupancy
Procedure		§ 155-10.1-305
§ 155-10.1-110	Contents	Alterations
§ 155-10.1-115	Information Required	§ 155-10.1-310
§ 155-10.1-120	Site Plan	Content
§ 155-10.1-125	Additional Details	§ 155-10.1-315
§ 155-10.1-130	Examination and	Changes
Review		§ 155-10.1-320
§ 155-10.1-135	Action on	Application
Applications		§ 155-10.1-325
§ 155-10.1-140	Endorsement	Final Inspection
§ 155-10.1-145	Approved Drawings;	§ 155-10.1-330
Revisions Prohibited		Issuance or Denial
§ 155-10.1-150	Disposition	
§ 155-10.1-155	Permit	Part 400
§ 155-10.1-160	Special Permits	Unsafe or Damaged
§ 155-10.1-165	Electronic Filings and	Buildings and Structures
		§ 155-10.1-401
		Unsafe Structures
		§ 155-10.1-405
		Examination
		§ 155-10.1-410
		Report
		§ 155-10.1-415
		Emergency Order to
		Vacate
		§ 155-10.1-420
		Sign
		§ 155-10.1-425
		Actual and Immediate
		Danger
		Part 500
		Miscellaneous Provisions
		§ 155-10.1-501
		Prohibition and
		Penalty

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Part 600 Building and Energy Codes

§ 155-10.1-601 International Building Code of 2009 Adopted

§ 155-10.1-605 Tropical Energy Code Adopted

§ 155-10.1-610 Precedence of Commonwealth Building Safety Code

§ 155-10.1-615 Earthquake and Typhoon Standards

Part 700 Definitions

§ 155-10.1-701 Statutory Definitions

§ 155-10.1-705 Additional Definitions

Appendix A Guidance Standards through Building Safety Code

Appendix B Testing Laboratories and Other Entities

Subchapter Authority: 1 CMC § 2404; 2 CMC § 7153.

Subchapter History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Amdts Proposed 15 Com. Reg. 10556 (Apr. 15, 1993);* Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

*A notice of adoption for the April 1993 proposed amendments was never published.

Commission Comment: PL 1-8, tit. 1, ch. 15, codified as amended at 1 CMC §§ 2401-2405, creates the Department of Public Works (DPW) within the Commonwealth government. See 1 CMC § 2401. 1 CMC § 2404 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Title 2, division 7, chapter 1 of the Commonwealth Code sets forth the building safety code for the Commonwealth. See 2 CMC §§ 7101-7181. 2 CMC § 7121 creates a Building Safety Division within the Department of Public Works, headed by the building safety official. The building safety official is charged with enforcing the provisions of the building safety code. 2 CMC § 7122. 2 CMC § 7153 directs the building safety official to issue building safety regulations.

On June 3, 1986, DPW proposed “Regulations Governing the Use of Public Sewers.” See 8 Com. Reg. 4400 (June 3, 1986). A notice of adoption was never published.

On October 22, 1986, DPW promulgated, pursuant to 9 CMC § 5201, emergency “Regulations Governing Traffic Signs, Signals, Markings and Speed Restrictions.” See 8 Com. Reg. 4724 (Nov. 17, 1986) (effective 120 days from Oct. 22, 1986). A notice of permanent adoption was never published.

Part 001 - General Provisions

§ 155-10.1-001 Authority

The regulations in this subchapter are promulgated pursuant to the authority of the Building Safety Code, Public Law 6-45, as amended.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-005 Existing Structures

TITLE 155: DEPARTMENT OF PUBLIC WORKS

The following specified provisions shall apply to existing buildings and structures:

- (a) It shall be unlawful to make any change in the use or occupancy of any structure or building without the approval of the building safety official and his certification that such new use of the structure or building is permitted under the Safety Code and the regulations in this subchapter and that such change does not result in a greater hazard to public safety or welfare. Such change in use must also comply with the requirements of the zoning code, Public Law 5-32.
- (b) If a building is increased in floor space or number of stories, the entire building or structure shall be made to conform to the requirements of the Safety Code and the regulations in this subchapter.
- (c) Where alterations or repairs are made within any period of twelve months which affects or includes in excess of fifty percent of the existing floor space area, the entire structure or building shall be made to comply with the provisions of the Safety Code and the regulations in this subchapter applicable to new buildings and structures. Exception: if the new construction is separated from the existing by fire walls of 2 houses or greater than existing construction does not have to comply.
- (d) Ordinary repairs to buildings or structures, of which repairs do not, within the twelve months period, exceed twenty-five percent of the existing floor space area of the building or structure, may be made without application or notice to the building safety official; provided, that the term ordinary repairs shall not include the removal or cutting of any structural member or support, or the removal or change of any required means of egress, or rearrangement of parts of a structure affecting the existing requirements; nor shall ordinary repairs include addition to, alteration of, replacement or relocation of any standpipe, water supply, sewer, drainage, drain leader, gas, soil, waste, vent or similar piping, electric wiring, or other work affecting public health, safety or welfare.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted a comma after the word “wiring” pursuant to 1 CMC § 3806(g).

§ 155-10.1-010 Compliance Required

No building or structure shall be constructed, extended, repaired, or altered in violation of the provisions of the Safety Code and the regulations in this subchapter, except for ordinary repairs as defined in § 155-10.1-005(d); and except further, that the raising or lowering or moving of a building or structure as a unit necessitated by a change in grade or the widening of a street shall be permitted; provided, that the building or structure is not otherwise altered or its use or occupancy changed.

Modified, 1 CMC § 3806(c), (d), (f).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted a comma after the word “repaired” pursuant to 1 CMC § 3806(g).

§ 155-10.1-015 Administration and Enforcement

The administration and enforcement of the provisions of the Safety Code and the regulations in this subchapter shall be the responsibility and duty of the building safety official.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-020 Cooperation from Public Agencies and Application to Public Buildings

Officials of other departments, agencies, or branches of government in the Commonwealth of the Northern Marianas exercising any degree of control over construction, use, or occupancy of buildings or structures, appurtenances connected or attached thereto or equivalent thereof, under other applicable laws of the Northern Mariana Islands shall cooperate and assist in the enforcement of the provisions of the Safety Code and the regulations in this subchapter. Any employee of such department or agency empowered to review the design or make inspections of such structures shall promptly report to the head of his department or agency any violations of the provisions of the Safety Code and these regulations. Such department or agency head shall promptly communicate the violation to the building safety official. Furthermore, it is the expressed intent of these regulations that the design and construction, alteration, modification, occupancy, and use of all public buildings shall be in full compliance with the requirements of the Safety Code.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted commas after the words “agencies,” “use,” and “occupancy” pursuant to 1 CMC § 3806(g).

§ 155-10.1-025 Purpose; Rules and Regulations

(a) The provisions of the regulations in this subchapter are designed to set forth the standards for protection of the public health, safety and welfare. The expressed approval of certain materials, methods, devices or equipment which will satisfy these same standards.

(b) In furtherance of the intent of subsection (a) of this section, the building safety official may formulate and promulgate and may amend or repeal regulations supplementary to and not inconsistent with the provisions of this and other applicable federal and Commonwealth laws. Said regulations shall have the force and effect of law and shall be concerned with the uses of alternate materials, methods, devices, equipment and test which are deemed acceptable for meeting the standards established by or pursuant to the law; and with such other matters as the

building safety official, from time to time may deem necessary in order to effectuate the expressed purposes of this law. It is the intent of this section that the standards of the governmental agencies and recognized national technical organizations listed in appendix A of this subchapter shall serve as a guide in prescribing regulations promulgated pursuant to this law.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: In subsection (a), the Commission changed “standard” to “standards” to correct a manifest error.

§ 155-10.1-027 Purpose; Energy and Energy Conservation

The people of the Commonwealth deserve high quality energy services which are clean, efficient, and promote economic development within the Commonwealth.

(a) Economic stimulus funds, under the federal American Recovery and Renewal Act of 2009 (ARRA), are available to the CNMI if the Commonwealth takes steps to enhance energy efficiency and the wise use of energy consonant with the ARRA. The statements of goals, purposes, and intentions in this section are intended to assist in qualifying for the stimulus funds.

(b) The Department’s goals for the Commonwealth include:

- (1) Increase energy efficiency to reduce energy costs and consumption for consumers, businesses, and government;
- (2) Reduce reliance on imported energy;
- (3) Improve the reliability of electricity and fuel supply and the delivery of energy services; and
- (4) Reduce the impacts of energy production and use on the environment.

(c) The Department’s goals for the Commonwealth are consistent with the ARRA’s, in that we propose to:

- (1) Preserve and create jobs and promote economic recovery;
- (2) Assist those most impacted by our difficult economic times;
- (3) Promote investments needed to increase economic efficiency; and
- (4) Promote investment in environmental protection and other infrastructure that will provide long-term economic benefits.

(d) The Governor has certified in writing the CNMI’s compliance with § 410 of the ARRA.

(e) As the ARRA states, at a minimum the Commonwealth should plan for and maximize efforts toward achieving the specific goal of reducing per capita energy use from the CNMI’s 1990 per capita energy use, by 2012.

(f) As the ARRA states, the Department agrees that the Commonwealth Public Utilities Commission (“CPUC”) should seek to implement, in appropriate proceedings for CUC and/or its successors, a general policy that ensures that utility financial incentives are aligned with:

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (1) Helping the customers use energy more efficiently;
 - (2) Proving timely cost recovery;
 - (3) Providing a timely earnings opportunity associated with cost-effect, measurable and verifiable energy savings in a way that sustains or enhances utility customers' incentives to use energy more efficiently.
- (g) As the ARRA states, the Executive, through the Department of Public Works, should implement the following:
- (1) A residential building energy code/s that meets or exceeds the most recent international energy conservation code, or achieves equivalent or greater energy savings;
 - (2) A commercial building energy code/s throughout the CNMI that meets or exceeds the ANSI/ASHRAE/IESNA Standard 90.1-2007, or achieves equivalent or greater energy savings;
 - (3) A plan to achieve 90% compliance with the above energy codes within eight years, including active training and enforcement programs and annual measurement of the rate of compliance.
- (h) As the ARRA states, the Executive should, to the maximum extent practicable, prioritize ARRA-based federal grants toward funding energy efficiency and renewable energy programs, including, but not limited to:
- (1) Expansion of existing energy efficiency programs, approved by the Department of Public Works or the CPIC, including energy efficiency retrofits of buildings and facilities funded by the CNMI or through rates under CPUC oversight;
 - (2) Expansion of existing programs, approved by Department of Public Works or the CPUC, to support renewable energy projects and deployment activities, including but not limited to programs operated by entities which have the authority and capability to manage and distribute grants, loans, performance incentives, and other forms of financial assistance; and
 - (3) Cooperation and joint activities with states and territories to advance more efficient and effective use of ARRA funding to support such priorities.
- (i) The Commonwealth should also be using the most up to date building codes. The present statutes adopt much older codes. But the old codes have been updated to the level of the International Building Code ("IBC") of 2009. The IBC's triennial updating process calls upon the expertise and real-world experience of thousands of building professionals, including building code officials. The Department wishes to bring our building codes up to date, empower the Building Safety Official to update as the construction industry and its professions update, recognize the proper seismic and typhoon safety standards and codes, and empower DPW to adopt the Tropical Energy Code drafted especially for the CNMI, Guam, Hawai'i, Puerto Rico, and the Virgin Islands.
- (j) The Department also wishes to make clear that DPW has full capability to administer the stimulus funding as well as the functions given it over the years, including develop and implement any required plans to achieve 90% of the ARRA-driven energy goals within eight years.

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Commission Comment: The Commission inserted commas after the words “efficient” in the introductory paragraph, “purposes” in subsection (A), “government” in subsection (b)(1), “incentives” in subsection (h)(2), and “Puerto Rico” in subsection (i) pursuant to 1 CMC § 3806(g). The Commission capitalized words at the beginning of subsections (f)(1) through (f)(3), (g)(1) through (g)(3), and (h)(1) through (h)(3) pursuant to 1 CMC § 3806(f). The Commission corrected the capitalization of the words “states” and “territories” in subsection (h)(3) and “the” in subsection (i) pursuant to 1 CMC § 3806(f). The Commission inserted a semicolon at the end of subsection (g)(2) pursuant to 1 CMC § 3806(g).

§ 155-10.1-030 Discretion to Adapt to Circumstances

The Building Safety Review Board on recommendation of the building safety official, may vary or modify the application of any provision of the Safety Code or the regulations in this subchapter consonant with their spirit and intent, upon application of the owner or his representative, in any of the following conditions:

(a) When the proposed variation or modification will not affect the public health, safety, or welfare, designed to be achieved, provided, or protected by the provisions of the Safety Code or the regulations in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted commas after the words “safety” and “provided” in subsection (a) pursuant to 1 CMC § 3806(g).

§ 155-10.1-035 New or Alternate Materials

(a) Any new or alternate materials, methods, devices, or equipment which are not covered by the Safety Code and the regulations in this subchapter may be used by their proponent only when the proposed use has been expressly authorized in writing by the building safety official.

(b) The proponent shall file, in addition to his application for a building permit, a request for authorization to use the proposed new or alternate material, method, device, or equipment, accompanied by proof in support of his claim regarding the consistency of the proposed use with the standards established by the Safety Code and the regulations in this subchapter. Such proof shall consist of a complete report from an approved materials testing laboratory listed in the appendix B to this subchapter on the performance characteristics of the subject matter to meet the proposed use as set forth in the application for a building permit.

(c) The building safety official, within a reasonable time after submission but not to exceed ninety days, of the request for authorization of the proposed use, shall approve or disapprove such use. Said approval or disapproval shall be in writing, and shall set forth the basis of said building safety official decision. Any approval shall require the applicant to utilize such material, method, device, or equipment in strict conformity with the terms of the approval.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Commission Comment: The Commission inserted commas after the words “devices” in subsection (a) and “device” in subsections (b) and (c) pursuant to 1 CMC § 3806(g).

§ 155-10.1-040 Prohibition

It shall be unlawful to construct, enlarge, alter, remove or demolish, or change the occupancy of a building, public or private, from one use group to another, without first filing an application with the building safety official in writing and obtaining the required permit therefore, except that ordinary repairs as defined in § 155-10.1-005(d) which do not involve any violation of the Safety Code and the regulations in this subchapter shall be exempt from this provision.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Part 100 - Building Permit Application and Review Process

§ 155-10.1-101 Application for Permit

An application for a permit shall be submitted in such form as the building safety official may prescribe and shall be accompanied by the required fee as prescribed in the regulations in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-105 Application Procedure

An application for a permit shall be made by the owner or lessee of the property, or agent of either, or by a CNMI licensed engineer or architect employed in connection with the proposed work. If the application is made by a person other than the legal owner it shall be accompanied by a duly verified affidavit of the owner that the applicant is authorized to make such application. The full names and addresses of the owner, lessee, applicant and, where the owner or lessee is a corporation, the responsible officers names shall be stated on the application.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-110 Contents

An application shall contain a general description of the proposed work, identify its location, the use and occupancy of all parts of the building or structure and of all portions of the site or lot not covered by the building, and such additional information as may be required by the building safety official.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-115 Information Required

An application for a permit shall be accompanied by not less than two copies of the specifications and of the drawings drawn to scale, with sufficient clarity and dimensions, to show the nature and character of the work to be performed. When quality of materials is essential for compliance with the Safety Code, specific information shall be given to establish such quality; and in no case shall the Safety Code be cited or the term “legal specifications” or its equivalent be used as a substitute for specific information. The building safety official may waive the requirement for filing drawings if the work involved is of a minor nature. The building safety official may prescribe a uniform format and size for drawings and specifications required with an application for permit.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The 2009 amendments corrected a typographical error and made no substantive revisions.

§ 155-10.1-120 Site Plan

There shall be filed a site plan showing the scale, size, and location of all the new construction and all existing structures on the site, distance from lot lines and the established street grades; and it shall be drawn in accordance with an accurate boundary line survey. In the case of demolition, the site plan shall show all construction to be demolished and the location and size of all existing buildings and constructions that are to remain on the site or plot. The building safety official may waive the requirements of this section when the work involved is of a minor nature.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted a comma after the word “size” pursuant to 1 CMC § 3806(g).

§ 155-10.1-125 Additional Details

The building safety official shall require that adequate details of structural, mechanical, and electrical work including computations, stress diagrams, and other essential technical data to be filed. All engineering drawings and computations shall bear the signature of a CNMI licensed professional engineer or architect who shall be responsible for the work.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Commission Comment: The Commission inserted commas after the words “mechanical” and “diagrams” pursuant to 1 CMC § 3806(g).

§ 155-10.1-130 Examination and Review

The building safety official shall promptly examine or cause to be examined, each application for a building permit and all drawings, specifications, information, and materials filed in conjunction therewith, in order to ascertain whether the proposed work is in compliance with the requirements of the provisions of the Safety Code and the regulations in this subchapter. Whenever the actual physical conditions of the proposed work, or the site thereof, are not apparent from the application for a building permit and the materials filed in conjunction therewith, the building safety official may require the submission of additional information or may examine or cause to be examined the site of the proposed work in order to determine such conditions.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted a comma after the word “information” pursuant to 1 CMC § 3806(g).

§ 155-10.1-135 Action on Applications

(a) The building safety official shall act upon each application for a building permit without unreasonable or unnecessary delay. On finding conformity with all the requirements of the regulations in this subchapter, the Safety Code, and other applicable laws, the building safety official shall, upon receipt of the required fee, issue the permit to the applicant.

(b) If an application for a permit or the drawings and specifications submitted therewith describe proposed work are not in conformity with all the requirements of law, or do not contain sufficient information to enable the building safety official to reach a decision, he shall not issue such a permit, but shall return the drawings and specifications to the applicant, together with a written statement setting forth his or her refusal to issue such permit, and reason therefore. The building safety official, upon request of the applicant, shall make such refusal, containing the reasons therefore, in writing.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-140 Endorsement

The building safety official, upon the issuance of a permit, shall endorse in writing or stamp on both sets of drawings and specifications “APPROVED FOR PERMIT # _____,” and affix his or her signature to such endorsement.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-145 Approved Drawings; Revisions Prohibited

Approved drawings and specifications shall not be revised, modified, or altered in any manner affected by the provisions of the Safety Code or the regulations in this subchapter without the expressed written authorization from the building safety official, and all such work shall be done in accordance with approved drawings and specifications.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted a comma after the word “modified” pursuant to 1 CMC § 3806(g).

§ 155-10.1-150 Disposition

The building safety official shall retain at least one set of approved and endorsed drawings and specifications with their attached data and return one endorsed set to the applicant. The applicant’s set shall be kept at the work site, at all times, during which the authorized work is in progress, and shall be open for inspection at all reasonable times to the building safety official or his authorized representative.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-155 Permit

(a) The issuance of a building permit or approval of drawings and specifications shall not be construed to be a permit for, or approval of any violation of the provisions of the Safety Code, the regulations in this subchapter, or other applicable law, except in the case of an approved modification pursuant to Safety Code § 7114 [2 CMC § 7114]. Any permit presuming to cancel such provisions or condone such violations shall be invalid and void in its entirety.

(b) The issuance of a building permit after approval of drawings, specifications, and attached data submitted therewith, shall not prevent the building safety official from thereafter requiring corrections of any errors in said drawings in writing, specifications, and data, nor from prohibiting building construction to be carried on thereunder until such correction(s) is/are made.

(c) Any building permit shall lapse and become invalid, if the work authorized by it is not commenced within six months after its issuance; or if the work is suspended or abandoned for a period of six months at any time after the work has been commenced. For cause, the building safety official may allow an extension up to a maximum of six months each. All such extensions shall be in writing and noted on the building permit and in the building permit records at the

building safety official office.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted a comma after the word “specifications” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 155-10.1-160 Special Permits

The building safety official may, at his discretion after the receipt of an application for a building permit and pending issuance of such permit, issue a special permit for the foundations or other substructures, without assurance that a building permit for the super structure will be granted. However, the special permit shall be issued only after the site plan foundation plans including calculation has been reviewed and approved. Such activity as the applicant may undertake under said special permit must be in full compliance with the provisions of the Safety Code, the regulations in this subchapter, and any other applicable laws.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-165 Electronic Filings and Meetings

(a) Any filing, application, presentation of plans or specifications, or other submission made pursuant to these regulations shall be in writing as defined in the regulations for this chapter. A person submitting electronically in a software format other than Microsoft Word, Excel, or Adobe Acrobat shall first obtain the approval of the Building Safety Official or his designee. For instance, architectural plans generated in AutoCad or SoftCad are not readable on the Department’s computers unless a reader program is included with the submission. Preferred media for submission would be CD/DVD or flash drive for files over 3 MB. Email attachment is acceptable for files of 3 MB or less.

(b) Any hearing, conference, or other meeting, can, with the agreement of the Building Safety Official or his designee, be conducted virtually, as defined in these regulations for this chapter, provided that a person entitled to attend is able to have the same access to the meeting as each participant at the noticed site. Typically this will mean that a speaker phone is, or computer speakers are, placed in the advertised venue and the person attending can hear each person speaking. If video conferencing is used the person shall be permitted to see the screen.

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

Commission Comment: The Commission corrected the capitalization of the words “regulations” and “chapter” pursuant to 1 CMC § 3806(f). The Commission inserted a comma after the word “conference” in subsection (b) pursuant to 1 CMC § 3806(g).

Part 200 – Inspection, Fees, and Compliance

§ 155-10.1-201 Inspection

(a) All construction or work in progress for which a permit is required shall be subject to inspection from time to time by the building safety official, or his designated representative(s). Certain types of constructions may require continuous or special inspections as determined by the building safety official. Any person or persons interfering with the building safety official or his authorized representative in the performance of such duties shall be liable to the penalties hereinafter provided.

(b) Work requiring a building permit shall not begin until the permit holder or his agent shall have posted an inspection checklist or other notice, in a conspicuous place on the premises and in such a position as to allow the building safety official or his authorized representative to make entries thereon regarding inspection of the work. The checklist or other notice which shall be furnished by the building safety official shall be maintained in such position by the permit holder until the work has been completed and a certificate of occupancy issued. The checklist or other notice shall maintain a record of every inspection including the time, date, and all violations of the provisions of the Building Safety Code, the regulations in this subchapter, or of other applicable laws, rules, and regulations.

(c) Re-inspections.

(1) A reinspection fee may be assessed for each inspection or reinspection when such work or portion of work for which an inspection is called is not complete or when corrections called for by the building safety official or his designated representative(s) are not made or are inadequately made.

(2) This subsection is not to be interpreted as requiring reinspection fees the first time a job is rejected for failure to comply with the requirements of this code, but as a means of discouraging the practice of calling for inspections before the job is ready for such inspection or reinspection.

(3) Reinspection fees may be assessed when the permit checklist or other notice is not properly posted on the work site, the approved drawings are not readily available to the inspector, access is not provided on the date inspection is requested, or construction deviates from drawings and/or specifications approved by the building safety official.

(4) To obtain a reinspection the applicant shall file an application therefore* in writing upon a form furnished for that purpose, by the building safety official and shall pay a reinspection fee if so assessed in accordance with this subsection.

(5) When reinspection fees are assessed, no reinspection of the work shall be performed until the required fees have been paid in full.

* So in original.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The original paragraphs of subsection (c) were not designated. The Commission designated

TITLE 155: DEPARTMENT OF PUBLIC WORKS

subsections (c)(1) through (c)(5). The Commission inserted commas after the words “date” and “rules” in subsection (b) pursuant to 1 CMC § 3806(g).

The 2009 amendments amended subsections (b) and (c)(3).

§ 155-10.1-205 Tests as Proof of Compliance

(a) Whenever there is insufficient evidence that any material or any construction does not conform to the requirements of the Safety Code or the regulations in this subchapter, or in order to substantiate claims for the use of alternate materials or methods of construction, the building safety official may require tests, as proof of compliance, to be made at the expense of the owner or his agent by an approved agency or testing laboratory.

(b) Tests shall be in accordance with generally recognized standard test procedures for the proposed use. In the absence of such standard test procedures, the building safety official shall specify the test procedure.

(c) The building safety official may require tests to be repeated, if at any time he has reason to believe that an approved or material or method no longer conforms to the requirements upon which the approval was based.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-210 Prefabricated Buildings

Where the unit or component parts of a prefabricated building are not readily accessible to inspection, the building safety official may accept a certification from an approved testing agency that the building is identical with a specimen previously tested and approved by the agency.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-215 Stoppage of Work for Non Compliance

(a) Upon notice from the building safety official that work on any building or structure is being executed contrary to the provisions of the Safety Code, the regulations in this subchapter, or other applicable laws, or in an unsafe and dangerous manner, the building safety official shall issue a stopwork order and such work shall be immediately stopped.

(b) The stop work order shall be in writing and shall be given to the owner of the property involved, or to the owner’s agent, or to the person in charge of the work; and shall state the conditions under which work may be resumed.

(c) The building safety official may require that work be stopped on oral notice, pending

TITLE 155: DEPARTMENT OF PUBLIC WORKS

issuance of a written order, in such instances where he deems immediate action is necessary for protection of public health, safety, or welfare.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: In subsection (b), the Commission changed the final semi-colon to a period to ensure consistent punctuation. The Commission inserted a comma after the word “safety” in subsection (c) pursuant to 1 CMC § 3806(g).

The 2009 amendments corrected a typographical error and made no substantive revisions.

§ 155-10.1-220 Revocation Permit

The building safety official shall revoke a permit or approval issued under the provisions of this law;

(a) In case of any false statement or misrepresentation as to a material fact in any application or drawings or specification in which the permit conditions are such that a permit should not have been issued.

(b) In any case where a building permit owner refuses to comply with a stop order issued under the provisions of § 155-10.1-215 herein above.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The cross-reference in subsection (b) erroneously cited § 7026, codified in this section. The Commission changed the reference so that it cites § 7025, codified at § 155-10.1-215.

§ 155-10.1-225 Fees

(a) Before a building permit is issued a permit fee, therefore*, shall be paid to the building safety official in accordance with the following schedule based upon valuation of the proposed work:

(1) Building Permit Fees

Construction Costs	Fees
\$1.00 to \$500	\$15.00
\$501 to \$2,000	\$15.00 for the first \$500 plus \$2.00 for each additional \$100.00 or fraction thereof, to and including \$2,000.00.
\$2,001 to \$25,000	\$45.00 for the first \$2,000 plus \$9.00 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00.
\$25,001 to \$50,000	\$252.00 for the first \$25,000.00 plus \$7.00 for each additional \$1,000.00 or fraction thereof,

TITLE 155: DEPARTMENT OF PUBLIC WORKS

	to and including \$50,000.00.
\$50,001 to \$100,000	\$427.00 for the first \$50,000.00 plus \$5.00 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00.
\$100,001 to \$500,000	\$677.00 for the first \$100,000/00 plus \$5.00 for each additional \$1,000.00 or fraction thereof, to and including \$500,000.00.
\$500,001 to \$1,000,000	\$2,677.00 for the first \$500,000.00 and \$3.00 for each additional \$1,000.00 or fraction thereof, and including \$1,000,000.00.
\$1,000,001 and up	\$4,177.00 for the first \$1,000,000.00 plus \$2.00 for each additional \$1,000.00 or fraction thereof.

(2) Plan Review Fees

Residential Plan Review			
	Single Family Plan Review		
		\$1.00 – 1,999	\$0. See paragraph (c), just below.
		\$2,000 - \$50,000	½ bldg permit fee. See paragraph (c), just below.
		\$50,001 & up	¾ bldg permit fee. See paragraph (c), just below.
	Multiple Resid. Plan Review		
		\$1.00 - \$999	\$0. See paragraph (c), just below.
	\$1,000 and up	¾ bldg permit fee. See paragraph (c), just below.	
Commercial Plan Review			
	\$1.00 - \$999	\$0. See paragraph (c), just below.	
	\$1,000 and up	¾ bldg permit fee. See paragraph (c), just below.	

(3) Other Fees

Demolition & Removal Fees		
	Residential	\$75.00
	Commercial	\$150.00
Grading Fees		
	Plan Review	\$0
	Permit	\$0
Sign Permit Fee		\$100.00
Other Inspection/Reinspection Fee		\$0

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Certificate of Occupancy	\$0
Penalty/Violation of Building Code	\$0
Placard	\$0
Fees for Documents and Related Services	
Photocopies	Less than 20 copies – no charge; 21 or more copies - \$0.50 per page
Photocopies, certified	\$1.50 per page
Electronic files on CD	\$10.00 for each CD
Electronic files on DVD	\$20.00 for each DVD
Copies of meeting/hearing recording on cassette tape	\$15.00 per tape
If complying with a request for information takes longer than one hour, labor shall be charged at the rate of \$20.00 per hour.	

(b) Where work, for which a permit is required by the Safety Code and the regulations in this subchapter, is started or proceed with prior to obtaining said permit, the fees as set forth above shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of the Safety Code and these regulations in the execution of the work nor from the assessment of any other penalties prescribed herein.

(c) Before drawings and specifications are accepted for reviewing, a plan-review fee, in addition to the building permit fee, shall be paid to the building safety official. For a building or structure not classified as a single-family dwelling unit and whose construction costs is \$1,000 or more, the plan-review fee shall be three-fourths of the building permit fee. For a single-family dwelling units whose valuation is over \$2,000 and less than \$50,000, the plan-review fee shall be one half the building permit fee. For single-family dwelling units whose valuation is \$50,000.00 and over, the plan-review fee shall be three-fourths the building permit fee.

* So in original.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Amdts Proposed 15 Com. Reg. 10556 (Apr. 15, 1993); Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990),

Commission Comment: The paragraphs of subsection (a) were undesignated in the original regulation. The Commission designated them as subsections (a)(1) through (a)(3). The Commission converted the phrase “Fees for Documents and Related Services” to title case and removed extraneous colons under this heading pursuant to 1 CMC § 3806(f) and (g). The Commission struck the figure “3/4” in subsection (c) and corrected “three-fourths” to “three-fourths” pursuant to 1 CMC § 3806(e) and (g).

The April 1993 amendments proposed to add a new fee schedule entitled “Special Fees for Other Permits.” A notice of adoption for the April 1993 proposed amendments has not been published and, therefore, the Commission has not incorporated the proposed changes.

The 2009 amendments amended subsection (a) and (c) and added subsections (a)(2) and (a)(3).

§ 155-10.1-230 Cessation in Construction

Whenever a cessation in construction of an approved building or structure exists of more than twelve months, the building safety official, by written order served upon the permit holder, may require the holder of the permit to maintain the premises in such condition of reasonable health and safety as may be determined by the building safety official as appropriate.

Modified, 1 CMC § 3806(e), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Part 300 - Certificates of Occupancy

§ 155-10.1-301 Certificate of Occupancy

No building or structure hereafter erected shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the building safety official and posted on the premises certifying that such building conforms to the provisions of the Safety Code and the regulations in this subchapter. The certificate of occupancy shall remain posted indefinitely in a conspicuous place. A certificate of occupancy for a business shall be issued with a term of one year only; the business must renew the certificate each year.

Modified, 1 CMC § 3806(d), (f).

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-305 Alterations

No building or structure hereafter enlarged or extended, or so altered, wholly or in part, so as to change its classification or occupancy shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the building safety official certifying that the work for which the permit was issued has been completed in accordance with the provisions of the Safety Code and the regulations in this subchapter; provided, that if the occupancy or use of such building was not discontinued during the work of alteration, the occupancy or use of said building or structure shall not continue for more than thirty days after completion of the alteration unless such certificate shall have been issued.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-310 Content

In addition to the certification as to compliance with the provisions of the Safety Code and the regulations in this subchapter, the certificate of occupancy shall state the purposes for which the

TITLE 155: DEPARTMENT OF PUBLIC WORKS

building may be used in its several parts, the maximum permissible live loads on floors, the number of individual persons that may be accommodated in any space, in case such number is limited by a provision of law or by the permit.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-315 Changes

(a) No change of occupancy shall be made in a building or structure hereafter erected or altered inconsistent with the last issued certificate of occupancy, unless a new certificate of occupancy is issued. No change of occupancy of a building or structure, shall be made, unless the building safety official finds, upon inspection, that such building or structure conforms substantially to the provisions of Safety Code with respect to the proposed new occupancy, and issues a certificate of occupancy thereof.

(b) The occupancy of a building shall not be deemed to have been changed because of a temporary vacancy or change of ownership or tenancy. The re-establishment in a building, after a change of occupancy has been made, of a prior use that would not have been permitted in a new building of the same type of construction is prohibited. The change from a specifically prohibited use to another specifically prohibited use shall not be made.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-320 Application

Any person desiring a certificate of occupancy as hereinabove required shall after completion of the work for which a building permit was issued, file with the building safety official a signed application therefore on a form furnished by the building safety official stating, in writing, that the work has been completed in compliance with the terms of the building permit and the requirements of the Safety Code and the regulations in this subchapter.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-325 Final Inspection

The building safety official, upon receipt of an application for a certificate of occupancy, shall promptly inspect or cause to be inspected the construction, enlargement, alteration, repair, conversion, movement, or improvement of the building, structure or appurtenances, or the installation of equipment for which a building permit was issued, in order to ascertain whether the proposed work has been completed in accordance with the requirements of the building permit and the provisions of the [Safety] Code and of the regulations in this subchapter.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted a comma after the word “movement” pursuant to 1 CMC § 3806(g).

§ 155-10.1-330 Issuance or Denial

(a) If after inspection as provided in § 155-10.1-325, it is found that the proposed work has been completed in accordance with the requirements of the building permit, and the provisions of the Safety Code and the regulations in this subchapter, the building safety official shall issue a certificate of occupancy. The building safety official shall keep a permanent record of all certificates of occupancy issued.

(b) If after inspection, as provided in § 155-10.1-325, it is found that the proposed work has not been completed in accordance with the building permit and the terms of the Safety Code and these regulations, the building safety official shall not issue an occupancy permit and shall order the work completed in compliance with the building permit, the Safety Code, and these regulations.

(c) The building safety official may issue a temporary use permit for any portion(s) of the premises which may be safely occupied prior to the issuance of a certificate of occupancy.

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

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The cross-references in subsections (a) and (b) erroneously cited § 7035, codified in this section. The Commission changed the references so that they cite § 7034, codified at § 155-10.1-325.

Part 400 - Unsafe or Damaged Buildings and Structures

§ 155-10.1-401 Unsafe Structures

(a) All unsafe buildings and structures are hereby declared to be illegal, and shall be repaired, vacated, or demolished, in accordance with the procedure established by the regulations in this subchapter.

(b) For the purpose of this law, unsafe buildings are all buildings and structures and/or equipment thereof which are structurally unsafe, or which are unsanitary, or which are unfit for human habitation, or are not provided with adequate means of egress, or which constitute a fire hazard, and electrically unsafe, or are otherwise dangerous to public health, safety, or welfare, which in relation to existing uses constitute a hazard to the safety of the public or occupants by reason of inadequate maintenance, dilapidation, obsolescence, or abandonment.

Modified, 1 CMC § 3806(d).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-405 Examination

The building safety official shall examine or cause to be examined every unsafe or damaged building or structure. He shall make or cause to be made, a written record of such examination, which shall set forth a factual description of the premises and specifically enumerate the particular conditions which are alleged to be violations of the provisions of the Safety Code or the regulations in this subchapter or otherwise render such buildings unsafe.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-410 Report

(a) The building safety official, whenever he shall make a finding, as a result of the examination required in § 155-10.1-405 shall:

(1)(i) Notify in writing, by personal service or certified mail, return receipt requested, the owner, occupant, lessee, mortgagee, agent and other persons having an interest in said building as shown by official land records that the building or structure is unsafe, and that:

(A) The owner must vacate, or repair, or demolish said buildings or structure in accordance with the terms of the notice and of the regulations in this subchapter.

(B) The occupant or lessee must vacate said building, or may have it repaired in accordance with the terms of the notice and of these regulations.

(C) Said mortgagee, agent, or other persons having an interest in said building, may at his own risk, repair, vacate, or demolish said building or have such work or act done.

(ii) Any person notified under this subsection to repair, vacate, or demolish any building shall be given such reasonable time, not exceeding thirty days, as may be necessary to do, or have done, the work or act required by the notice as herein provided.

(iii) Such notice shall describe the building deemed unsafe, shall include a statement of the particulars which make it unsafe, and shall contain an order requiring the building to be put in such condition as to comply with the terms of these regulations within a stated time, not exceeding thirty days.

(2) Post, or cause to be posted in a conspicuous place at the principal point of entry to the building deemed unsafe, a notice reading as follows:

“This building has been found to be a dangerous building by the building safety official, government of the Northern Mariana Islands. This notice is to remain on the building until it is repaired, vacated, or demolished in accordance with the notice which has been given to all parties having an interest in this building. It is unlawful to remove this notice until such notice is complied with.”

(b) The building safety official, or his designee, in the event of non-compliance with the notice and order hereinabove provided for in this section shall:

(1) Notify in writing by personal service or certified mail, return receipt requested, the same parties as notified under subsection (a) of this section to appear before him on a specified date to show cause why the building deemed unsafe would not be repaired, vacated, or demolished in accordance with the statement of particulars set forth in the prior notice. The notice shall be

TITLE 155: DEPARTMENT OF PUBLIC WORKS

given at least five business days before hearing.

(2) Hold a hearing and hear such testimony as building safety official employees, owner, occupant, lessee, mortgagee, or other interested parties shall offer relative to the unsafe building. Interested parties shall be given a full and fair opportunity, in person or through counsel, to present any facts relative to the proposed action. The testimony taken shall be under oath and taken stenographically or by machine, but the parties shall not be bound by strict rules of evidence.

(3) Make written findings of fact from the testimony offered at said hearing, and on the basis of such findings render a written decision as to whether the building is safe, or unsafe within the meaning of the Safety Code and the regulations in this subchapter. The original copy of such findings and decisions shall be kept in the Department of Public Works. Other copies of the findings and decisions shall be sent to all parties served with notice of the hearing. Copies of the transcript made at the hearing shall be given to interested parties upon request and at their expense.

(4) On finding that the building is unsafe, issue an order based on such findings of fact, commanding all parties served with notice of the hearing to repair, vacate, or demolish such unsafe building; provided, that any person so notified, except the owner, shall have the privilege of vacating or repairing, and; provided further, that no person other than the owner shall be ordered to demolish said building.

(c) In the case of non-compliance with the above order, and if judicial review of the order is not sought within thirty days pursuant to the Administrative Procedure Act [1 CMC §§ 9101, et seq.], the building safety official shall cause such building to be repaired, vacated, or demolished as the facts may warrant, in accordance with the standards for repair, vacating, or demolition set forth in subsection (d) of this section. The cost of such repair, vacating, or demolition shall be a lien against the land on which the building exists or existed, as the case may be, until recovered by the Commonwealth of the Northern Marianas.

(d) The building safety official in ordering repair, vacating, or demolition of a building found unsafe, shall be governed by the following standards:

(1) If an unsafe building can reasonable be repaired so that it will no longer exist in violation of the terms of the regulations in this subchapter, it shall be ordered to be repaired.

(2) If an unsafe building is in such condition as to make it dangerous to the health, safety, or general welfare of its occupants, it shall be ordered to be vacated.

(3) If an unsafe building is damaged or decayed, or deteriorated to the extent of fifty percent of its original value or structure, it shall be demolished. In all cases where a building cannot be repaired so that it will no longer exist in violation of the terms of these regulations, it shall be demolished. In all cases where the unsafe building is fire hazard existing or erected in violation of the Safety Code or these regulations or unsafe within the meaning of the Safety Code and regulations, it shall be demolished.

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

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The original paragraphs of subsection (a)(1) were not designated. The Commission designated subsections (a)(1)(i) through (iii).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

In subsection (b)(4), the Commission changed “order” to “ordered” to correct a manifest error. In subsection (c), the Commission changed “Procedures” to “Procedure” to correct a manifest error. The Commission inserted commas after forms of the word “vacate” in subsections (a)(1)(i)(C), (a)(1)(ii), (b)(1), (b)(4), (c), and (d), and after the word “safety” in subsection (d)(2) pursuant to 1 CMC § 3806(g).

§ 155-10.1-415 Emergency Order to Vacate

The building safety official, whenever he determines that an unsafe building, structure, or portion thereof, constitutes an immediate danger to the occupants, shall order the buildings, structure, or portion thereof, to be vacated at once and not re-occupied until issuance of a new certificate of occupancy by the building safety official.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

§ 155-10.1-420 Sign

(a) The building safety official, on the vacating of any building in accordance with the provisions of §§ 155-10.1-410 and 155-10.1-415 of this subchapter, shall post or cause to be posted at each entrance to the building, a sign stating: “This building is unsafe and its use or occupancy is prohibited by the building safety official. Any person entering this building without permission of the building safety official shall be subject to fine.”

(b) Such sign shall remain posted until the required repairs are made or demolition is completed.

(c) Any person entering the building, except for the purpose of making the required repairs of effecting demolition, or any person removing any sign posted by the building safety official shall be liable for the penalties provided for in the regulations in this subchapter.

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

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: In subsection (a), the Commission inserted the final period. In subsection (c), the Commission changed “liable to the penalties” to “liable for the penalties” to correct a manifest error.

§ 155-10.1-425 Actual and Immediate Danger

(a) In case there shall be, in the opinion of the building safety official immediate danger of failure or collapse of a building or structure, or any part thereof so as to endanger life or property, he shall promptly cause such building or structure to be declared temporarily safe, or if necessary, to be demolished. In such cases the decision of the building safety official shall be final and conclusive.

(b) The building safety official, in exercising his powers and duties under this section, may at

TITLE 155: DEPARTMENT OF PUBLIC WORKS

once enter any unsafe building, or the land on which it stands, or abutting land or structure, with such assistance and at such cost as he deems necessary. He may vacate adjacent structures and protect the public by an appropriate fence or such other means as may be necessary, and for this purpose he may close a public or private way.

(c) Costs incurred under this section shall be paid by the government of the Northern Mariana Islands on a certified voucher of the building safety official. Such costs shall be a lien on the land on which the building exists or existed, as the case may be, until recovered by the government of the Northern Mariana Islands.

Modified, 1 CMC § 3806(f).

History: Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Part 500 - Miscellaneous Provisions

§ 155-10.1-501 Prohibition and Penalty

(a) It shall be unlawful for any person to construct, alter, repair, remove, demolish, equip, use, occupy, or maintain any building or structure or portion thereof in the Northern Mariana Islands contrary to any provision of the Safety Code or the regulations in this subchapter.

(b) Any person violating the provisions of the Safety Code or these regulations shall be liable for a civil fine of not less than ten dollars and not more than five hundred dollars, per day provided that the fine shall not exceed ten thousand dollars or one percent of the total value of the project, whichever is greater. Such penalties may be imposed by the building safety official in addition to any criminal penalties established by the Safety Code.

(c) Each day of a violation shall constitute a separate offense.

(d) Other departments and agencies of the Commonwealth of the Northern Mariana Islands shall cooperate and assist in the enforcement of the Safety Code and these regulations. Any employees of such department or agency empowered to review the design or make inspections of such structures shall promptly report to the head of his department or agency any suspected violations of the provisions of the Safety Code or these regulations. Such department or agency head shall promptly communicate the suspected violation to the Director of Public Works. Furthermore, it is the expressed intent of the Safety Code and these regulations that the design and construction, alteration, modification, occupancy, and use of all public buildings shall be in full compliance with the requirements of the Safety Code and regulations.

Modified, 1 CMC § 3806(d), (e), (f).

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The Commission inserted commas after the words “occupy” in subsection (a) and “occupancy” in subsection (d) pursuant to 1 CMC § 3806(g).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

The 2009 amendments amended subsection (c).

Part 600 - Building and Energy Codes

§ 155-10.1-601 International Building Code of 2009 Adopted

The International Building Code (“IBC”) of 2009, including its energy codes, as adopted by the International Code Council is hereby adapted as the Commonwealth Building Safety Code. All statutory and regulatory references shall be superseded by the IBC of 2009, as amended. Due to the length of the IBC, it is incorporated by reference herein, and a person wishing a copy shall be directed to the publisher, of the ICC.

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

Commission Comment: The Commission corrected the spelling of the word “superseded” pursuant to 1 CMC § 3806(g).

§ 155-10.1-605 Tropical Energy Code Adopted

(a) The Model Tropical Energy Code (“TEC”), dated January 7, 2009, as prepared for the CNMI, Guam, Hawai’i, Puerto Rico, and the Virgin Islands, is hereby adopted as an amendment to, and a portion of, the IBC of 2009, as though written into the IBC.

(b) Due to the length of the TEC, it is incorporated by reference herein, and a copy of the TEC shall be made available for the cost of reproduction and distribution by the Department, either electronically or in hard copy form. Apparent conflicts between provisions of the IBC and the TEC shall be resolved in writing upon request to the Building Safety Official.

(c) The Building Safety Official’s future amendments to the Building Safety Code may include subsequent versions of the International Building Code and/or the Tropical Energy Code, or portions thereof.

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

Commission Comment: The Commission moved a quotation mark inside the parentheses in subsection (a) pursuant to 1 CMC § 3806(g). The Commission inserted a comma after the words “Puerto Rico” in subsection (a) pursuant to 1 CMC § 3806(g).

The Department of Public Works issued the following Notice of Implementation of 2014 Revised CNMI Tropical Energy Code in the August 28, 2014 Commonwealth Register:

The Department of Public Works hereby provides notice to the public that it shall implement and adopt the 2014 revised CNMI Tropical Energy Code. The current CNMI Tropical Energy Code, dated January 7, 2009, was adopted as an amendment to, and portion of, the International Building Code of 2009. NMIAC § 155-10.1-605(a). Under NMIAC § 155-10.1-605(c), the Building Safety Official is authorized to implement subsequent versions of the Tropical Energy Code. The Department of Public Works shall implement and adopt the 2014 revised Tropical Energy Code pursuant to this provision.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Implementation of the 2014 revised CNMI Tropical Energy Code is necessary to bring the CNMI Tropical Energy Code into compliance with the American Society of Heating, Refrigerating, and Air-Conditioning Engineers standards 90.1-2007 and 90.1-2010, as well as the 2009 and 2012 editions of the International Energy Conservation Code.

36 Com. Reg. 35397 (Aug. 28, 2014).

§ 155-10.1-610 Precedence of Commonwealth Building Safety Code

Where conflicts or contradictions exist between provisions of the Building Safety Code and the regulations issued thereunder and a model code, then the Building Safety Code shall apply. (See 2 CMC sec. 7145)

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

§ 155-10.1-615 Earthquake and Typhoon Standards

(a) Compliance with technically proper earthquake and typhoon standards is a matter of life and death for the residents of and visitors to the CNMI, The application of the proper earthquake reference standard is a technical matter which cannot be ignored. The determination of the maximum sustained winds in recent typhoons and super-typhoons is also a technical matter which cannot be ignored. There are, therefore, sound technical reasons to construe ambiguous statutory language from 1990 to provide for the minimum protective standards rather than ceilings.

(b) Notwithstanding a contrary reading of the language of 2 CMC § 7146 (Earthquake Design Requirements), for purposes of earthquakes design requirements, the Northern Mariana Islands have been declared by the United States Geographical Survey to be in Seismic Zone 4. Such a decision by the USGS shall be deemed conclusive. All structures which are required to meet earthquake construction requirements shall be designed and constructed to Seismic Zone 4 standards.

(c) Notwithstanding a contrary reading of the language of 2 CMC § 4147 (Typhoons), the minimum design strength of every building and structure and every portion thereof to which the Building Safety Code applies shall be designed and constructed to withstand the minimum horizontal and uplift pressure of wind velocity of at least 175 miles per hour.

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

Part 700 - Definitions

§ 155-10.1-701 Statutory Definitions

The definitions of 2 CMC § 7112 (Definitions) are adopted for this chapter without further detail, unless stated in the following subsections.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

§ 155-10.1-705 Additional Definitions

The following definitions shall apply to this chapter.

- (a) “Building safety code,” “safety code,” and “code” mean the International Building Code of 2009, including its energy codes, as adapted by the International Code Council, and as amended thereafter by regulations of the Building Safety Official.
- (b) “Building safety code review board” or “Board” shall mean either of the following upon the Executive Order of the Governor:
- (1) The Building Safety Code Review Board described in this Chapter 1*, including 2 CMC sec. 7114 and 7125;
 - (2) Such other regulatory board designated by the Governor to fulfill the statutory responsibilities of the Building Safety Code Review Board: or
 - (3) A successor agency, or other instrumentality of the GNMI, that is authorized by the Board or otherwise by law, in writing to undertake specific notice, complaint, decision, enforcement, and/or other action of the matters addressed in this subchapter.
- (c) “Building Official” means the Building Safety Official.
- (d) “CABO code” or “Cabo code” means the IBC.
- (e) “Code” means the Building Safety Code.
- (f) “CPUC” means the Commonwealth Public Utilities Commission.
- (g) “CUC” means the Commonwealth Utilities Corporations.
- (h) “Delivered” or “Presented.” The term means:
- (1) Delivered in person;
 - (2) Deposited in the mail, with postage paid;
 - (3) Faxed, and a memo generated automatically by the sending fax machine or fax modem that the fax was received; or
 - (4) Emailed with an acknowledgment by the recipient that the email had been received.
- (i) “Electronic communication” means communication mediated by the following electronic means: fax, email, internet posting that allows the reader to access the information and download a copy of it, CD-ROM, DVD, diskette, thumb drive, or other portable memory device.
- (j) “Electronic Means” includes telephone, video-conference, electronic-communications-mediated written, aural and/or video means, including mediated through the internet, and/or email.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (k) “Decision” includes the adoption of a plan, regulation, rule, resolution, opinion, order, or directive. Typically a decision is reduced to writing and includes a description or discussion of the reasons for it.
- (l) “IBC” means the International Building Code.
- (m) “ICC” means the International Code Council.
- (n) “International Building Code” means the code developed and published by the ICC, or its successor organizations.
- (o) “International Conference of Building Officials” shall mean International Code Council or its successor organizations.
- (p) “Mail” means one of the following mail services: U.S. Postal Service (USPS) first class mail, or priority mail, or Express Mail; overnight mail by one of the following private carriers, if they serve the CNMI: Airborne Express; DHL; FedEx; UPS; or the national postal services of the following countries, using service equivalent to or better than USPS airmail: Australia; China; Japan; Korea; Republic of the Philippines; any FAS state.
- (q) “Person” includes, but is not limited to a natural person, non-governmental organization, firm, association, partnership, limited liability company, corporation, and/or a government agency or other government corporation, political subdivision, or instrumentality of the CNMI or the United States.
- (r) “Real time” or “real-time” means immediately before, during and/or after, as in “as it happens.”
- (s) “Registered” means, when applied to a design or construction professional, or to a builder or tradesman, “licensed.”
- (t) “Safety Code” means the Building Safety Code.
- (u) “Signature” or “Signed” means as follows: The term includes a hard copy or an electronic communication that bears the hallmark of legitimacy, including original hard copy, xerox of an original, fax copy, electronic signature through use of a digital code, and an electronic copy of a hard copy signature if separately confirmed as true and correct.
- (v) “Uniform Building Code” shall be read to mean the IBC.
- (w) “Virtual” or “Virtually,” when used with respect to a meeting, means by electronic means that provide for real-time communication to and from the participants in such a manner that each participant can hear and/or read the comments of each other participant.
- (x) “Writing” includes hard copy, and electronic communications including such electronic

TITLE 155: DEPARTMENT OF PUBLIC WORKS

formats as fax, email, pdf format and word processing formats which are generally commercially available.

(y) Rules of Construction: The following rules of construction shall be applied to the regulations of this subchapter:

(1) “Include,” “includes,” or “including” shall be read as though followed by “but not limited to” or “but is not limited to.”

(2) The male, female, and neuter/neutral shall each be read to mean the other, unless the context expressly excludes such interpretation.

(3) The singular shall be read to mean the plural, and vice versa, except where the context specifically indicates otherwise.

* So in original.

History: Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009).

Commission Comment: The Commission inserted commas after the words “code” in subsection (a), “enforcement” in subsection (b)(3), “drive” in subsection (i), “order” in subsection (k), “subdivision” in subsection (q), “includes” in subsection (y)(1), and “female” in subsection (y)(2) pursuant to 1 CMC § 3806(g). The Commission capitalized the words at the beginning of subsections (h)(1) through (h)(4) pursuant to 1 CMC § 3806(f). The Commission moved punctuation inside quotation marks in subsections (h), (r), (s), (w), and (y)(1) pursuant to 1 CMC § 3806(g). The Commission inserted a quotation mark in front of the word “presented” in subsection (h) pursuant to 1 CMC § 3806(g). The Commission corrected the capitalization of the word “regulations” in subsection (y) pursuant to 1 CMC § 3806(g). The Commission substituted section numbers pursuant to 1 CMC § 3806(d).

Appendix A
Guidance Standards through Building Safety Code

Guidance shall be found in the International Building Code (“IBC”) of 2009, including its energy codes, as adopted by the International Code Council, and as amended thereafter by regulations of the Building Safety Official of the Department of Public Works.

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Amdts Proposed 15 Com. Reg. 10556 (Apr. 15, 1993);* Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Appendix B
Testing Laboratories and Other Entities

Approved Materials Testing Laboratories

- (a) Underwriter Laboratory
- (b) Factory Mutual
- (c) California State Fire Marshal

History: Amdts Adopted 31 Com. Reg. 29744 (Aug. 27, 2009); Amdts Proposed 31 Com. Reg. 29538 (May 20, 2009); Emergency 31 Com. Reg. 29483 (May 29, 2009); Amdts Proposed 15 Com. Reg. 10556 (Apr. 15, 1993);* Adopted 12 Com. Reg. 7508 (Dec. 15, 1990); Proposed 12 Com. Reg. 7321 (Sept. 15, 1990).

Commission Comment: The 2009 amendments change the name of this appendix, but made no substantive changes.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

SUBCHAPTER 155-10.2 FLOOD DAMAGE PREVENTION REGULATIONS

Part 001	General Provisions	§ 155-10.2-125	Delegation	of
§ 155-10.2-001	Statement of Purpose		Responsibilities	
§ 155-10.2-005	Definitions			
§ 155-10.2-010	Lands to Which	Part 200	Provision for Flood Hazard	
	These Regulations Apply	Reduction		
§ 155-10.2-015	Basis for Establishing	§ 155-10.2-201	Standards	of
	the Areas of Special Flood Hazards		Construction	
§ 155-10.2-020	Flood Hazards	§ 155-10.2-205	Standards for Storage	
	Mitigation Plan		of Materials and Equipment	
§ 155-10.2-025	Compliance	§ 155-10.2-210	Standards for Utilities	
§ 155-10.2-030	Abrogation and	§ 155-10.2-215	Coastal High Hazard	
	Greater Restrictions		Areas	
§ 155-10.2-035	Interpretation	§ 155-10.2-220	Standards	for
§ 155-10.2-040	Warning and		Subdivisions	
	Disclaimer of Liability	§ 155-10.2-225	Standards	for
§ 155-10.2-045	Severability		Manufactured Homes	
		§ 155-10.2-230	Standards	for
			Recreational Vehicles	
Part 100	Administration	Part 300	Variance and Appeal	
§ 155-10.2-101	Designation of the	Procedures		
	Building Safety Official	§ 155-10.2-301	Variance Procedures	
§ 155-10.2-105	Building Permit	§ 155-10.2-305	Variance Factors	
	Required	§ 155-10.2-310	Variance Conditions	
§ 155-10.2-110	Duties and	§ 155-10.2-315	Variance Decisions	
	Responsibilities			
§ 155-10.2-115	Interpretation of Firm			
	Boundaries	Part 400	Miscellaneous Provisions	
§ 155-10.2-120	Alteration of	§ 155-10.2-401	Records	
	Watercourse			

Subchapter Authority: 1 CMC § 2404; 2 CMC § 7148.

Subchapter History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: PL 1-8, tit. 1, ch. 15, codified as amended at 1 CMC §§ 2401-2405, creates the Department of Public Works (DPW) within the Commonwealth government. See 1 CMC § 2401. 1 CMC § 2404 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

Title 2, division 7, chapter 1 of the Commonwealth Code sets forth the building safety code for the Commonwealth. See 2 CMC §§ 7101-7181. 2 CMC § 7121 creates a Building Safety Division within the Department of Public Works, headed by the building safety official. The building safety official is charged with enforcing the provisions of the building safety code. 2 CMC § 7122. 2 CMC § 7153 directs the building safety official to issue building safety regulations.

2 CMC § 7148 requires buildings and structures in the Commonwealth located in special flood hazard areas to conform to the National Flood Insurance Act and its implementing federal and Commonwealth regulations. The Director of DPW is authorized to promulgate regulations necessary to bring the CNMI into compliance with the

National Flood Insurance Act of 1968. See 2 CMC § 7148(b).

Part 001 - General Provisions

§ 155-10.2-001 Statement of Purpose

It is the purpose of the regulations in this subchapter to promote the public health, safety, and general welfare of the residents of the Commonwealth of the Northern Mariana Islands, and to minimize public and private economic and physical losses due to flood conditions in specific areas by provisions designed to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood projects;
- (c) Minimize damage to public facilities and utilities;
- (d) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
- (e) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: In subsection (e), the Commission changed “Insure” to “Ensure” to correct a manifest error.

§ 155-10.2-005 Definitions

- (a) “Appeal” means a request for a review of an official interpretation of any provision of the regulations in this subchapter or a request for a variance.
- (b) “Appurtenant structure” means a structure which is on the same parcel of property as the principal structure to be insured and the use of which is incidental to the use of the principal structure.
- (c) “Area of shallow flooding” means a designated zone with a one percent or greater annual chance of flooding to an average depth of one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow.
- (d) “Area of special flood hazard” is the land in the flood plain within the Commonwealth of the Northern Mariana Islands subject to a one percent or greater chance of flooding in any given year.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (e) “Base flood” means the flood having a one percent chance of being equaled or exceeded in any given year also known as the “100 year flood.”
- (f) “Basement” means any area of a building having its floor subgrade (below ground level) on all sides.
- (g) “Coastal high hazard area” means an area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. It is an area subject to high velocity waters, including coastal and tidal inundation or tsunamis.
- (h) “Critical feature” means an integral and readily identifiable part of a flood protection system, without which the flood protection provided by the system would be compromised.
- (i) “Curvilinear line” means the border on either a flood hazard area or consists of a curved or contour line that follow the topography.
- (j) “Development” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment and materials.
- (k) “Encroachment” means the advancement or infringement of uses, plant growth, fill excavation, buildings; permanent structures or development into a flood plain which may impede or alter the flow capacity of a flood plain.
- (l) “Erosion” means the process of the gradual wearing away of land masses. This is not covered under the National Flood Insurance program (“NFIP”).
- (m) “Existing manufactured home park or subdivision” means a manufacture home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before the effective date of the floodplain management regulations adopted by a community.
- (n) “Expansion to an existing manufactured home park or subdivision” means the preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets and either final site grading or the pouring of concrete pads).
- (o) “Fill” is the placement of fill material at a specified location to bring the ground surface up to a desired elevation.
- (p) “Fill material” can be natural sand, dirt, soil, or rock. For the purposes of flood plain management, fill materials may include concrete, cement, brick, or similar material on a case by case basis.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

(q) “Flood, flooding, or floodwater” means a general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters;
- (2) The unusual or rapid accumulation or runoff of surface waters from any source; or
- (3) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or current of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as a flash flood, or an abnormal tidal surge, or by similarly unusual and unforeseeable event which results in flooding as defined in subsection (q)(1) of this definition.

(r) “Flood elevation determination” means a determination by the building safety official (“Administrator”) of the Department of Public Works that the flood level has a one percent or greater chance of occurrence in any given year.

(s) “Flood Insurance Rate Map” (FIRM) means the official map on which the Federal Insurance Administration has delineated both the areas of special flood hazard and the risk premium zones applicable to the Commonwealth of the Northern Mariana Islands.

(t) “Flood plain management” means the operation of an overall program of corrective and preventive measures for reducing flood damage, including but not limited to emergency preparedness plans, flood control works, and flood plain management regulations.

(u) “Flood protection system” means those physical structural works for which funds have been authorized, appropriated, and expended and which have been constructed specifically to modify flooding in order to reduce the extent of an area of special flood hazard.

(v) “Flood proofing” means any combination of structural and non-structural additions, changes, or adjustments which reduce or eliminate flood damage to real estate or improved real property; water and sanitary facilities; or any structures and their contents.

(w) “Flood related erosion” means a condition that exists in conjunction with a flooding event that alters the shoreline or bank of a watercourse, or one that increases the possibility of loss of the land adjacent to the shoreline or watercourse through erosion.

(x) “Functionally dependent use” means a use which cannot be performed unless it is located or carried out in close proximity to the water. The term includes only docking facilities, port facilities necessary for the loading or unloading of cargo or passengers, ship building and ship repair facilities.

(y) “Hazard mitigation plan” means a plan that incorporates a process whereby the potential of future loss due to flooding can be minimized by planning and implementing alternatives for flood plain management throughout the Commonwealth of the Northern Mariana Islands.

(z) “Highest adjacent grade” means the highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (aa) “Lowest floor” means the lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement is not considered a building’s lowest floor; provided, that such enclosure is not built so as to render the structure in violation of applicable non-elevation design requirements.
- (bb) “Mangrove stand” means an assemblage of mangrove trees which are mostly low trees noted for a copious development adventitious roots above the ground and which contain one or more of the following species: black mangrove (*Avicennia nitida*); red mangrove (*Rhizophora mangle*); white mangrove (*Languncularia racemost*); and buttonwood (*Conocarpus erecta*).
- (cc) “Map” means the Flood Insurance Rate Map (FIRM) of the Commonwealth of the Northern Mariana Islands.
- (dd) “Mean sea level” means for purposes of the NFIP the National Geodetic Vertical Datum (NGVD) or other datum to which base flood elevations shown on the Commonwealth’s FIRM are referenced.
- (ee) “New construction” means for flood plain management purposes structures for which the start of construction commenced on or after the effective date of a flood plain management regulation adopted by the Commonwealth.
- (ff) “Parcel” means any contiguous quantity of land in the possession of, owned by, or recorded as the property of the same claimant, person, or company.
- (gg) “Person” includes any individual or group of individuals, corporation, partnership, association, or any other entity including the Commonwealth of the Northern Mariana Islands government.
- (hh) “Recreational vehicle” means a vehicle which is
- (1) Built on a single chassis;
 - (2) 400 square feet or less when measured at the largest horizontal projection;
 - (3) Designed to be self-propelled or permanently towable by a light-duty truck; and
 - (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.
- (ii) “Regulatory floodway” means the channel of a watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than a desired height.
- (jj) “Special flood hazard area” means an area having special flood and/or flood related erosion hazards as shown on the FIRM.
- (kk) “Standard flood insurance policy” means the flood insurance policy issued by the federal Administrator, or an insurer pursuant to an arrangement with the federal Administrator, pursuant

TITLE 155: DEPARTMENT OF PUBLIC WORKS

to federal statutes* and regulations.

* So in original.

(ll) “Start of construction” includes substantial improvement and means the date the building permit was issued provided the actual start of construction, repair reconstruction, placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of the slab or footings, the installation of piles, the construction of columns or any work beyond the stage of excavation. Permanent construction does not include:

- (1) Land preparation, such as clearing, grading and filling;
- (2) The excavation of basements, footings, piers, or foundations;
- (3) The erection of temporary forms; or,
- (4) The installation of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure.

(mm) “Structure” means for flood plain management purpose, a walled or roofed building, including a gas or liquid storage tank, that is principally above ground land affixed to a permanent site, as well as a manufactured home on a permanent foundation. For the latter purpose, the term includes a building while in the course of construction, alteration, or repair, but does not include building materials or supplies intended for use in such construction, unless such materials are within an enclosed building on the premises.

(nn)(1) “Substantial improvement” means any repair, reconstruction, or improvement of structure, the cost of which equals or exceeds 50 percent of the market value or replacement value, whichever is lower of the structure either

- (i) Before the improvement or repair is started or
 - (ii) If the structure has been damaged and is being restored, before the damage occurred.
- (2) For the purposes of this definition “substantial improvement” is considered to occur when the first alteration of any wall, ceiling floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure. The term does not include any project for improvement of a structure to comply with existing federal, local health, sanitary or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a structure listed on the National Register of Historic Places or Commonwealth inventory of historic places.

(oo) “Variance” means a grant of relief from the requirements of the regulations in this subchapter which permit construction in a manner that would otherwise be prohibited by these regulations.

(pp) “Watercourse” means a channel cut by running water, through which at least periodically.*

*So in original.

(qq) “Water surface elevation” means the height in relation to the (NGVD) of 1929*, of floods

TITLE 155: DEPARTMENT OF PUBLIC WORKS

of various magnitudes and frequencies in the flood plains of coastal or riverine areas.

* See Commission Comment.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

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

In subsection (e), the Commission corrected the spelling of “equaled” and moved the period after “flood” inside of the closing quotation mark. In subsection (hh), the Commission changed “build” to “built” to correct a manifest error. In subsection (hh)(3), the Commission changed the final comma to a semi-colon to ensure consistent punctuation. In subsection (qq), the Commission corrected the spelling of “coastal.” The Commission inserted commas after the words “unpredictable” in subsection (c), “brick” in subsection (p), “works” in subsection (t), “appropriated” in subsection (u), “changes” in subsection (v), “person” in subsection (ff), “association” in subsection (gg), “placement” in subsection (ll), and “alteration” in subsection (mm) pursuant to 1 CMC § 3806(g).

The NGVD of 1929, referenced in subsection (qq), does not contain information for the CNMI, as it was not a part of the United States at the time. The National Oceanic and Atmospheric Administration superseded previous vertical datum for the CNMI with the Northern Marianas Vertical Datum of 2003. 74 Fed. Reg. 3990 (Jan. 22, 2009).

§ 155-10.2-010 Lands to Which These Regulations Apply

The regulations in this subchapter shall apply to all areas of special flood hazard within the Commonwealth of the Northern Mariana Islands.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-015 Basis for Establishing the Areas of Special Flood Hazards

The areas of special flood hazard identified by the Federal Insurance Administration (“FIA”), through the Federal Emergency Management Agency (“FEMA”) in a scientific and engineering report entitled “The Flood Insurance Study for the Commonwealth of the Northern Mariana Islands,” dated April 30, 1990, with the accompanying FIRM and any amendment thereto is hereby adopted as reference and declared to be a part of the regulations in this subchapter. The flood insurance study and FIRM are on file at the Building Safety Official Office, Department of Public Works (“DPW”).

Modified, 1 CMC § 3806(d), (g).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: The Commission moved the comma after “Islands” inside of the closing quotation mark.

§ 155-10.2-020 Flood Hazards Mitigation Plan

The building safety official (“Administrator”) of the Department of Public Works shall create a

flood hazards mitigation plan for prevention of flood damage within the Commonwealth. The plan shall be completed and submitted to the Governor for approval within a reasonable time not to exceed six months from the promulgation of the regulations in this subchapter. The building safety official shall use all appropriate federal, state, local, and other information to provide for orderly building and development within special hazard areas while also preventing flood damage. The plan shall not be inconsistent with federal or Commonwealth law or regulations.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-025 Compliance

No structure or land shall be constructed, located, extended converted*, or altered without full compliance of the regulations in this subchapter. Violators shall be subject to penalties as outlined in 2 CMC § 7126.

* So in original.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-030 Abrogation and Greater Restrictions

The regulations in this subchapter are not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where there exists another rule, easement, or deed restriction which imposes a more stringent application of these regulations, it shall apply.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: The Commission inserted commas after the words “abrogate,” “covenants,” and “easement” pursuant to 1 CMC § 3806(g).

§ 155-10.2-035 Interpretation

In the interpretation and application of the regulations in this subchapter, all provisions shall be:

- (a) Considered as minimum requirements.
- (b) Liberally construed in favor of the governing body.
- (c) Deemed neither to limit nor repeal any other powers granted under Commonwealth or federal law.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-040 Warning and Disclaimer of Liability

The degree of flood protection required by the regulations in this subchapter is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural uses. These regulations do not imply that land outside such areas will be free from flooding or flood damage. These regulations shall not create liability on the part of the Commonwealth of the Northern Mariana Islands government, any officials thereof or the Federal Insurance Administration for any flood damage that results from reliance on these regulations or any administrative decision lawfully made under these regulations.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-045 Severability

The regulations in this subchapter and the various parts thereof are hereby declared to be severable. Should any section be declared by the courts to be invalid, such decision shall not affect the validity of the regulations as a whole, or any portion thereof other than that section so declared invalid.

Modified, 1 CMC § 3806(d).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Part 100 - Administration

§ 155-10.2-101 Designation of the Building Safety Official

The building safety official is hereby designated to administer and implement the regulations in this subchapter by granting or denying building or development permits in accordance with the provisions herein.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-105 Building Permit Required

A building permit shall be obtained before construction, subdivision, or development begins within any area of special flood hazard. Application for a building or development permit shall be made to the building safety official and will follow DPW's Building Safety Code guidelines for application. The application will specifically include:

- (a) Proposed elevation in relation to mean sea level, of the lowest floor (including basement)

TITLE 155: DEPARTMENT OF PUBLIC WORKS

of all structures; the elevation of the highest adjacent grade and proposed elevation of the lowest floor of all structures.

(b) Proposed elevation in relation to mean sea level to which any structure will be flood proofed.

(c) Certification by a CNMI licensed professional land surveyor, engineer or architect that the flood proofing methods for any non-residential structure meets the flood proofing criteria in § 155-10.2-201, including the elevation to which the structure is flood proofed.

(d) Description of the extent to which any watercourse shall be altered or relocated as a result of the proposed development.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-110 Duties and Responsibilities

The duties and responsibilities of the building safety official shall include but are not limited to:

(a) Permit Review. The building safety official shall:

(1) Review all building, subdivision, and other development permit applications to determine that the requirements of the regulations in this subchapter have been satisfied, and all other Commonwealth and federal permits have been obtained.

(2) Review all permit applications to determine if the building sites are reasonably safe from flooding, and that the proposed development is consistent with the need to minimize or eliminate flood damage.

(3) Review all building, subdivision, and other development permit applications to determine if the proposed development will be reasonably safe from flooding. If a proposed building site is in a flood-prone area, all new construction and substantial improvements shall be:

(i) Designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy;

(ii) Constructed with materials resistant to flood damage;

(iii) Constructed by methods and practices that minimize flood damages; and,

(iv) Constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

(4) Review all subdivision and development permit applications to determine that adequate drainage is provided to reduce exposure to flood hazards.

(b) Use of other Flood Data. The building safety official shall obtain, review, and reasonably utilize any base flood elevation and floodway data available from federal or other sources as criteria for requiring that new construction, substantial improvements or other development meet the requirements of the regulations in this subchapter.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

(c) Information to Be Obtained and Maintained. The building safety official shall promulgate, periodically up date, and make available as needed, flood insurance policies and procedures covering the following:

- (1) The certified elevation required in § 155-10.2-201 (residential);
- (2) The certification required in § 155-10.2-201 (shallow flooding);
- (3) The flood proofing certification required in § 155-10.2-201 (non-residential);
- (4) The flood proofing certification required in § 155-10.2-201 (subdivision); and
- (5) The coastal high hazard certification required in part 200. (coastal).

(d) When an area of special flood hazard has been designated, the building safety official shall prohibit encroachments, including fill, new construction, substantial improvement, and other development which would cause an increase in flood elevations of more than one foot during the occurrence of a base flood.

Modified, 1 CMC § 3806(c), (d), (f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: The Commission inserted a colon at the end of subsection (a)(3) and inserted a comma after the word “review” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 155-10.2-115 Interpretation of Firm Boundaries

The building safety official shall make interpretations as to the exact location of the boundaries of the areas of special flood hazard. A person contesting the location of a boundary shall be given a reasonable opportunity to appeal the interpretation.

Modified, 1 CMC § 3806(f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-120 Alteration of Watercourse

Prior to the issuance of a permit for the alteration or relocation of a watercourse within a special hazard area the person seeking the alteration or relocation shall:

- (a) Have the written permission of the building safety official and submit copies of that permission to FEMA, FIA.
- (b) Ensure that the flood carrying capacity of the altered or relocated portion of said watercourse is maintained and not lessened.

Modified, 1 CMC § 3806(f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-125 Delegation of Responsibilities

TITLE 155: DEPARTMENT OF PUBLIC WORKS

The Director of the Department of Public Works is hereby empowered to delegate authority granted herein, including the authority to promulgate rules and any regulations as hereinafter set forth in § 1(b), PL 8-7. Any duty prescribed herein to be performed by the Director is hereby assigned and charged to the Building Safety Code Division and the building safety official (Administrator) may designate one member of his staff as floodplain administrator or create a new position of floodplain administrator.

Modified, 1 CMC § 3806(f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Part 200 - Provision for Flood Hazard Reduction

§ 155-10.2-201 Standards of Construction

In all areas of special flood hazard, the following standards are required that all structures shall conform to all portions of Commonwealth Public Law 6-45.

(a) **Anchoring**

All new construction, including manufactured homes, and new improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic or hydrostatic loads, including the effects of buoyancy.

(b) **Construction Materials and Methods**

(1) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(2) All new construction and substantial improvements shall use methods and practices that minimize flood damage.

(3) All electrical, heating, ventilation, plumbing, airconditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding, provided that none of the service facilities shall be located below the base flood elevation or depth number specified on the FIRM.

(c) **Elevation and Flood Proofing**

(1) New construction and substantial improvement of any structure shall have the lowest floor, including the basement, elevated to or above the base flood elevation. Non-residential structures may meet the standards of this section. Upon completion of the structure, the elevation of the lowest floor including basement shall be certified by a CNMI licensed professional land surveyor, engineer or architect and verified by the local building inspector that elevation requirements have been met. Notification of compliance shall be in writing to the building safety official.

(2) New construction and substantial improvement of new structure in zone AO shall have the lowest floor, including basement, elevated to or above the depth specified on the FIRM's highest adjacent grade. If there is no depth number on the FIRM then the lowest floor including the basement shall be elevated to a depth of at least two feet above the highest adjacent grade. Non-residential structures may meet standards in subsection (c)(3). Upon completion, the

TITLE 155: DEPARTMENT OF PUBLIC WORKS

structures compliance shall be certified by a CNMI licensed professional land surveyor, engineer or architect and verified by the local building inspector. Notification shall be in writing to the building safety official.

(3) Non-residential construction shall either be elevated in conformance with subsection (c)(1) or together with attendant utility and sanitary facilities shall be flood proofed so that below the base flood level the structure shall

- (i) Be watertight with walls substantially impermeable to the passage of water,
- (ii) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy and
- (iii) Be certified by a licensed professional engineer or architect that the design and methods of construction of the structure are in accordance with accepted standards of practice for meeting the requirements of this subsection.

(d) Construction Methods

(1) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a CNMI licensed professional engineer or meet or exceed the following minimum criteria:

(i) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding, the bottom of all openings may be equipped with screens, louvers, or other coverings provided that they permit the automatic entry and exit of floodwaters.

(2) All new construction and substantial improvements in the coastal high hazard area (if base flood elevation data available on the FIRM) shall be elevated on pilings and columns so that the bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above the base flood level, and the pile or column foundation and structure attached thereto is anchored to resist flotation, collapse, and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall have a one percent chance of being equaled or exceeded in any given year (100 year mean recurrence interval). A CNMI licensed professional engineer shall develop or review the structural design, specifications, and plans for construction and shall certify that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this subsection. Pilings used as structural support shall be designed and anchored so as to withstand all impact forces and buoyancy factors of a base flood. There shall be no fill used for structural support of buildings.

(3) If breakaway walls are used, such enclosed space or storage shall not be used for human habitation.

(4) Prior to construction, plans of any structure with breakaway walls must be approved by the building safety official.

(5) Compliance with this section shall be certified by a CNMI licensed professional land surveyor, engineer or architect and that certification shall be forwarded to the building safety official of the Department of Public Works.

(e) Drainage. All new construction and substantial improvements shall have adequate drainage paths around structures on slopes, to guide flood water around, from, and away from

proposed structures.

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

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission comment: In subsection (c)(2), the Commission corrected the spelling of “depth” and “equaled.” The Commission inserted commas after the words “collapse” in subsection (a), “plumbing” and “equipment” in subsection (b)(3), “louvers” in subsection (d)(1)i, and “collapse” and “specifications” in subsection (d)(2) pursuant to 1 CMC § 3806(g).

§ 155-10.2-205 Standards for Storage of Materials and Equipment

The storage or processing of materials that are in times of flooding buoyant, flammable, explosive, or could be injurious to persons or the environment is prohibited. Storage of other materials or equipment may be allowed if not subject to damage by flooding and firmly anchored or readily removable from the sea within the time available after flood warning.

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: The Commission inserted a comma after the word “explosive” pursuant to 1 CMC § 3806(g).

§ 155-10.2-210 Standards for Utilities

All new and replacement water supply and sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the system and discharge from systems into flood waters. On site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

§ 155-10.2-215 Coastal High Hazard Areas

Coastal high hazard areas are located within the areas of special flood hazard established in § 155-10.2-015. These areas have special flood hazards associates with high velocity waters from coastal and/or tidal inundation, and tsunamis and the following provisions shall apply therein:

- (a) Location of structures
 - (1) All building or structures shall be located landward and out of reach of mean high tide.
 - (2) Man-made alterations of sand dunes or mangrove stands which would increase flood damage are prohibited.

Modified, 1 CMC § 3806(c), (g).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: In subsection (a)(2), the Commission changed “is” to “are” and corrected the spelling of “sand dunes” to correct manifest errors.

§ 155-10.2-220 Standards for Subdivisions

- (a) All preliminary subdivision proposals shall identify the flood hazard area and the elevation of the base flood.
- (b) All subdivision plans will provide the elevation of proposed structure(s) and pad(s). If the site is filled above the base flood elevation, the final first floor and pad elevations shall be certified by a registered professional engineer or surveyor and provided to the Floodplain Administrator.
- (c) All subdivision proposals shall be consistent with the need to minimize flood damage.
- (d) All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
- (e) All subdivisions shall provide adequate drainage to reduce exposure to flood hazards.

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: The Commission inserted commas after the words “gas” and “electrical” in subsection (d) pursuant to 1 CMC § 3806(g).

§ 155-10.2-225 Standards for Manufactured Homes

- (a) All manufactured homes that are placed or substantially improved, within zones A1-30, AH, and AE on the community’s Flood Insurance Rate Map, on sites located
 - (1) Outside of a manufactured home park or subdivision,
 - (2) In a new manufactured home park or subdivision,
 - (3) In an expansion to an existing manufactured home park or subdivision, or
 - (4) In an existing manufactured home park or subdivision on a site upon which a manufactured home has incurred “substantial damage” as the result of a flood, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is elevated to or above the base flood elevation (the CNMI Building Safety Code recommends at least one foot above the base flood elevation) and be securely anchored to an adequately anchored foundation system to resist flotation collapse and lateral movement.
- (b) All manufactured homes that are placed or substantially improved on sites located within zones V1-30, V, and VE on the community’s Flood Insurance Rate Map will meet the requirements of § 155-10.2-215 and subsection (a) of this section.
- (c) All manufactured homes to be placed or substantially improved on sites in an existing manufactured home park or subdivision within zones A1-30, AH, AE, V1-30, V, and VE on the community’s Flood Insurance Rate Map that are not subject to the provisions of § 155-10.2-315(a) will be elevated so that either the
 - (1) Lowest floor of the manufactured home is at or above the base flood elevation (CNMI Building Safety Code recommends at least one foot above the base flood elevation), or

(2) Manufactured home chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

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

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: In subsection (c), the Commission changed “place” to “placed.” In subsection (c)(2), the Commission changed “support” to “supported” and “reinforce” to “reinforced” to correct manifest errors. The Commission corrected the spelling of the word “chassis” in subsection (c)(2) pursuant to 1 CMC § 3806(g).

§ 155-10.2-230 Standards for Recreational Vehicles

(a) All recreational vehicles placed on sites within zones A1-30, AH, and AE on the community’s Flood Insurance Rate Map will either:

- (1) Be on the site for fewer than 180 consecutive days,
- (2) Be fully licensed and ready for highway use – a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices, and has no permanently attached additions, or
- (3) Meet the permit requirements of part 100 of this subchapter and the elevation and anchoring requirements for manufactured homes in § 155-10.2-215.

(b) Recreation vehicles placed on sites within zones V1-30, V and VE on the community’s Flood Insurance Rate Map will meet the requirements of subsection (a) of this section and § 155-10.2-215.

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

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: In subsection (a)(2), the Commission corrected the spelling of “by.”

Part 300 - Variance and Appeal Procedures

§ 155-10.2-301 Variance Procedures

No variance shall be granted by the building safety official unless he finds that:

(a) A showing of good and sufficient cause such as a renovation, rehabilitation or reconstruction, a determination that a failure to grant the variance would result in exceptional hardship to the applicant, a determination that the granting of a variance shall not result in increased flood heights, additional threats to public safety, extraordinary public expense, nuisances, fraud or a conflict with existing federal or Commonwealth laws or regulations.

(b) Reasons of economic considerations, aesthetics, or because variances have been issued in the past are not good or sufficient cause.

Modified, 1 CMC § 3806(f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: The Commission inserted a comma after the word “variance” in subsection (b) pursuant to 1 CMC § 3806(g).

§ 155-10.2-305 Variance Factors

In deciding upon variance applications the building safety official shall consider all technical evaluations and all relevant factors and standards specified in other sections of the regulations in this subchapter, including but not limited to:

- (a) The danger that materials may be swept into floodwaters and cause injury to others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The importance of the services provided by the proposed facility to the community;
- (d) The availability of alternative locations;
- (e) The compatibility of the proposed use with existing and anticipated development;
- (f) The safe access of ordinary and emergency vehicles in times of floods; and
- (g) The cost of providing governmental services during and after flood conditions, including repair and maintenance of public utilities, streets, and bridges.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: In subsection (b), the Commission deleted the word “due” after “danger” to correct a manifest error. The Commission inserted a comma after the word “streets” in subsection (g) pursuant to 1 CMC § 3806(g).

§ 155-10.2-310 Variance Conditions

(a) Upon consideration of the factors above and the purpose of the regulations in this subchapter the Director may attach such additional conditions to the granting of variances as he deems necessary to further the purposes of these regulations.

(b) Variances shall not be issued within any designated floodway if any increase in flood levels during a base flood discharge would result.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard to afford relief.

(d) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed in the National Register of Historic Places or a Commonwealth listing of historic places without regard to the procedures set forth in the remainder of this part.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Commission Comment: The Commission inserted a comma after the word “rehabilitation” in subsection (d) pursuant to 1 CMC § 3806(g).

§ 155-10.2-315 Variance Decisions

(a) Upon granting or denying an application for a variance, the building safety official shall provide all parties concerned the written decision which shall include the reason for said decision. No granted variance shall be operative until such written decision has been provided.

(b) When a variance application has been granted, the building safety official shall notify in writing that

(1) The issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance up to amounts as high as \$25 for \$100 of insurance coverage, and

(2) Such construction below the base flood level increases risks to life and property. Such notification shall be maintained with a record of all variance actions as required by § 155-10.2-401.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

Part 400 - Miscellaneous Provisions

§ 155-10.2-401 Records

The building safety official shall maintain the records of all variance applications. The decisions rendered thereon shall also be maintained and shall be provided to FEMA and to any Commonwealth agencies that so request, as well as to the general public at a nominal cost for copying. All CNMI flood control records shall be considered public documents open to the public for inspection during regular working hours.

Modified, 1 CMC § 3806(f).

History: Adopted 15 Com. Reg. 11070 (Oct. 15, 1993); Proposed 15 Com. Reg. 10603 (May 15, 1993).

**CHAPTER 155-20
ROADS AND FACILITIES DIVISION**

**SUBCHAPTER 155-20.1
PUBLIC RIGHTS-OF-WAY AND RELATED FACILITIES REGULATIONS**

Part 001	General Provisions	§ 155-20.1-350	Stays	of
§ 155-20.1-001	Purpose and Findings		Determination	
§ 155-20.1-005	Definitions			
§ 155-20.1-010	Powers and Duties			
Part 100	Public Rights-of-way	Part 400	Complaints	
§ 155-20.1-101	Public Rights-of-way;	§ 155-20.1-401	Encroachment	or
In General		§ 155-20.1-405	Obstruction of Public Right-of-way	
§ 155-20.1-105	Prohibition on	§ 155-20.1-410	Department Action	
Closure of Public Right-of way		§ 155-20.1-410	Complaint Forms;	
§ 155-20.1-110	Prohibition on		Record Keeping	
Encroachments, Impairments, and/or		§ 155-20.1-415	Special Injury Not	
Obstructions		Required		
		§ 155-20.1-420	Party to Hearing	
Part 200	Permits for Closure or Restriction from Department for Public Purposes	Part 500	Removal of Encroachment or Obstruction; Procedures and Remedies	
§ 155-20.1-201	Power and Authority	§ 155-20.1-501	Removal of an	
§ 155-20.1-205	Prohibition on	§ 155-20.1-505	Encroachment or Obstruction	
Closure for Private Purpose		§ 155-20.1-510	Remedies and	
§ 155-20.1-210	Permits		Procedure for Remedies	
		§ 155-20.1-510	Procedures for	
Part 300	Permits for the Obstruction, Impairment, or Use of a Public Right-of-way		Removal of Obstructions and/or	
§ 155-20.1-301	Applications for and		Encroachments, and for Suspensions,	
Granting of a Permit			Revocations, and Fines	
§ 155-20.1-305	Public Notice of	Part 600	Notices and Service; In General	
Application for a Permit to Encroach		§ 155-20.1-601	Service	
§ 155-20.1-310	Time Limits	§ 155-20.1-605	Notice	
§ 155-20.1-315	Procedure; Form for	§ 155-20.1-610	Notice for Expedited	
Application			or Summary Proceeding	
§ 155-20.1-320	Conditions for	Part 700	Claims Against Department; Appeals to Secretary; Other Remedies	
Issuance of a Permit		§ 155-20.1-701	Claims Against the	
§ 155-20.1-325	Name of Permittee		Department or the Secretary Affecting	
§ 155-20.1-330	Fees		Personalty or Real Property	
§ 155-20.1-335	Revocation,	§ 155-20.1-705	Appeals to the	
Suspension, and Penalties			Secretary of Department Determinations and	
§ 155-20.1-340	[Reserved]		Other Actions	
§ 155-20.1-345	Finality			

TITLE 155: DEPARTMENT OF PUBLIC WORKS

§ 155-20.1-710	Other Remedies	§ 155-20.1-801	Construction of These Regulations
Part 800	Miscellaneous Provisions	§ 155-20.1-805	Severability

Subchapter Authority: 1 CMC § 2404; 2 CMC § 4134.

Subchapter History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: PL 1-8, tit. 1, ch. 15, codified as amended at 1 CMC §§ 2401-2405, creates the Department of Public Works (DPW) within the Commonwealth government. See 1 CMC § 2401. 1 CMC § 2404 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction.

2 CMC §§ 4131-4137 prohibits any person from cutting or trenching into a road without a permit from the Department of Public Works. 2 CMC § 4133. 2 CMC § 4134 authorizes the Department to promulgate such rules and regulations deemed necessary for the implementation of the permit requirement.

Part 001 - General Provisions

§ 155-20.1-001 Purpose and Findings

(a) The Department has the power and authority to construct and maintain all public works and roads, unless otherwise provided by law and to construct, maintain and operate public signs, traffic signals, public vessels, public buildings, and public works functions previously performed by chartered municipalities, unless otherwise provided by law (1 CMC § 2403). The Department has jurisdiction over this property and these facilities for the stated matters.

(b) The Department is required by the Legislature to adopt rules and regulations regarding those matters over which the Department has jurisdiction (1 CMC § 2404; 2 CMC § 4923). The promulgation of regulations to accomplish these ends is necessarily and fairly implied in and incident to the powers expressly granted and is essential to the accomplishment of the declared objects and purposes.

(c) The Department's functions include repairing, improving and maintaining in good and safe condition all public roads, sidewalks, sewers, drains, and other public rights-of-way.

(d) The Department hereby finds and declares that the public is entitled to the uninterrupted, unimpeded, and unobstructed use and quiet enjoyment of every portion and part of public rights-of-way and the public's rights therein are not limited to the traveled portion. The public includes pedestrians and vehicular travelers as well as property owners and users who receive services through the rights-of-way. The public's uses include driving vehicles, cycling, horseback riding, walking, gathering, and meeting for commerce, recreation, cultural, and religious matters and ceremonies.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Commission Comment: The Commission inserted comma after the words “drains” in subsection (c) and “unimpeded,” “gathering,” and “cultural” in subsection (d) pursuant to 1 CMC § 3806(g).

§ 155-20.1-005 Definitions

(a) “Department” means the Department of Public Works and its successor agencies, as well as an instrumentality of the CNMI that is authorized by the Department, or otherwise by law, in writing to undertake specific notice, complaint, enforcement, and/or other regulatory action of the matters addressed in the regulations in this subchapter. Such instrumentality may include, but is not limited to, a Mayor or his/her designee.

(b) “Determination” means a decision which is reduced to writing and includes a description or discussion of the reasons for it.

(c) “Drain” whenever used in this subchapter, is a facility or surface feature which collects and transmits or conducts water that has originated as rainfall or otherwise collected on the surface of the ground, either covered or uncovered, and includes:

- (1) The main stream or trunk and all tributaries or branches of a creek; a watercourse, wash, ravine, pond, hole, or ditch;
- (2) A natural depression that, during rainy weather, collects water as a pond;
- (3) A pipe, culvert, main, or constructed ditch;
- (4) A sanitary sewer or a combined sanitary and storm sewer;
- (5) A stone sewer or conduit composed of tile, brick, concrete, or other material; and/or
- (6) The following mechanical or constructed devices:
 - (i) Structures or mechanical devices, that treat, purify, sift, or clean the flow of such drains;
 - (ii) Pumping or lifting equipment necessary to assist or relieve the flow of such drains; and/or
 - (iii) A levee, dike, barrier, or a combination of any or all of same, constructed, or proposed to be constructed, for the purpose of drainage or for the purification, sifting, or cleaning of the flow of such drains;
- (7) But shall not include a dam, impoundment, or other surface feature, pipe, conduit, and flowage rights used in connection with any of these, which is isolated so that it guides and/or retains water solely on one user’s real property.

(d) “Encroachment” of a right-of-way means:

- (1) Something that comes within the following general description:
 - (i) Situated upon, in, or over a right-of-way without a permit, deed, lease, license, or other official written permission; and
 - (ii) Which may be of either a legal or a physical nature, or both;
- (2) Something that includes, but is not limited to, one of these specifically described things or conditions when located on, in, or over a right-of-way:
 - (i) Fences;
 - (ii) Signs;
 - (iii) Awnings;
 - (iv) Platforms and pads;
 - (v) Tanks, waste containers or storage containers;
 - (vi) Bollards, planters, dividers, and other traffic or landscaping constructions, whether

TITLE 155: DEPARTMENT OF PUBLIC WORKS

poured in place or pre-built and placed on site;

- (vii) Walls, footings, roofs, overhangs, and other components of buildings;
- (viii) Fixtures, including but not limited to, heating, air conditioning and ventilating equipment, electrical equipment, lighting equipment, and plumbing;
- (ix) Underground pipes, conduits, tanks, vaults, and traps; and
- (x) Personal, movable property.

(e) “Highway” means a road designed to accommodate vehicles traveling at speeds greater than 30 miles per hour, including, but not limited to, Beach Road, Middle Road, (Chalan Pale Arnold) and Cross-Island Road (Chalan Pale Monsignor Guerrero).

(f) “Obstruction” of a right-of-way means:

(1) Something that comes within the following general description:

(i) An object located alongside, thereon, or therein, or overhead which is large enough and situated in such a way as to:

(A) Interfere with foot, animal, cycle or motor vehicle traffic, maintenance or the free passage of drainage waters; and/or

(B) Interfere visually with vehicular traffic and/or pedestrian cross traffic; and/or

(ii) An object, excessive noise, smoke or vapor, fuel or lubricant drip, or other pollution which creates a safety hazard or other traffic congestion;

(iii) An object or material located within a public drain so as to impede the free flow of water therein; and/or

(iv) Interference or impairment to travel, whether the travel is by foot, by animal, by cycle, or by motor vehicle; and/or

(2) Something that is one of these specifically described things or conditions in, on, over, or under, and when specifically stated, alongside, the public right-of-way:

(i) A fence or curb;

(ii) A ditch, cut, trench, hole, or other opening thereon;

(iii) A current of water directed so as to saturate, wash, or do damage;

(iv) A building, installation, roadside stand, gasoline pump and related facility, or other structure or use;

(v) Signage located therein, thereon, overhead, or alongside, including but not limited to, a poster, billboard, sandwich board, free-standing, or trailer-mounted sign, other than traffic sign or signal:

(A) Which constitutes a safety hazard; and/or

(B) A prohibited sign, marking or signaling device under the CNMI Vehicle Code, 9 CMC § 5204, or succeeding provision;

(vi) A vehicle or load, including an animal which is being led, ridden or driven, or a vehicle drawn by an animal, which constitutes a safety hazard;

(vii) An immobilized or legally inoperative vehicle, push cart, wheelbarrow, or similar device:

(A) Constituting a safety hazard or interfering with maintenance operations therefor; and/or

(B) Left on or along a public right-of-way in excess of 7 days without a permit;

(viii) Unused poles, wires, structures or other appliances;

(ix) Solid waste;

(x) A fallen tree; and/or

(xi) A dead animal; and

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (3) Provided that, this definition shall not apply to any person who shall:
- (i) First secure a lawful permit or other authorization for the obstruction;
 - (ii) Lawfully fell any tree for use end shall immediately remove the same out of the right-of-way; or
 - (iii) Desire to drain or otherwise improve his/her property, through, or along which property a public right-of-way may pass, and who shall:
 - (A) Give due notice to the proper government authority of such intention, and who shall secure from such government authority any required written permission for any work or excavating s/he proposes to do within the limits of the right-of-way; and
 - (B) Further, with respect to which the Department shall not have communicated in writing an objection on the grounds of public health, safety, or welfare.
- (g) “Person” includes, but is not limited to a natural person, non-governmental organization, firm, association, partnership, limited liability company, corporation, and/or a government agency or other government corporation, political subdivision, or instrumentality, of the CNMI or the United States. Except that, for the purposes of 2 CMC §§ 4131-36 (PL 5-41) (cutting or trenching into a roadway) the definitions of the CNMI Code, 2 CMC § 4132 shall control, thereby excluding the CNMI and its employees.
- (h) “Public,” with respect to “right of way” refers to the right of the public to travel upon or otherwise use the way, and is not restricted to whether the public actually uses the way.
- (i) “Remediation” typically includes all of the following, but is not limited to:
- (1) Removing an encroachment or obstruction;
 - (2) Filling up any ditch or excavation;
 - (3) Regrading, including regrading side gutters or ditches;
 - (4) Reconstruction of pre-existing pavements, supporting materials and related fixtures and/or utilities; and
 - (5) Obtaining related permits and approvals.
- (j) “Remediation costs” include, but are not limited to:
- (1) The direct costs, fees, and expenses of remediation;
 - (2) The indirect costs, fees, and expenses of remediation, including but not limited to, contractors’ overheads and contractors’ reasonable profits;
 - (3) Related legal and consulting expenses and fees;
 - (4) Related public safety costs, including but not limited to, wages, salaries, and other agency costs, both direct and indirect;
 - (5) The related wages, salaries, other costs, both direct and indirect, for Department and other CNMI employees and contract employees;
 - (6) Equipment costs, including but not limited to, rental or the equivalent usage of owned equipment, maintenance and repair, and the purchase of required specialized equipment.
- (k) “Right-of-way” includes, but is not limited to roads, streets, sidewalks, paths, trails, beds for roads or railways, bridges, bridge abutments, culverts, drains, and their foundations and supports, which are dedicated in whole or in part to the passage of people, animals, vehicles, and/or drainage water.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

(l) “Road” means road, street, alley, way, or other thoroughfare through or over which vehicles travel. Except that, for the purposes of 2 CMC §§ 4131-4136 (PL 5-41) (cutting or trenching into a roadway) the definition of the CNMI Code, 2 CMC § 4132 for a “road” shall control.

(m) “Safety hazard” includes, but is not limited to an object, fluid, smoke, aerosol, pollutant, and/or other material and/or excessive noise that:

- (1) Interferes with a person’s ability to see or hear another person or object on a public right-of-way;
- (2) Impedes the flow of vehicular or pedestrian traffic in such a way as to endanger property, life, or health;
- (3) Impedes the flow of stormwater drainage, electric or water line or wastewater; and/or
- (4) Otherwise endangers the public health or safety.

(n) “Secretary” means the Secretary of the Department, or other chief executive officer of the Department, his/her designee, or, in the case of a hearing conducted pursuant to the regulations in this subchapter, the term shall also include an administrative hearing officer assigned pursuant to the Secretary’s order of reference.

(o) “Writing” includes hard copy, and such electronic formats as fax, email, pdf format, and word processing formats which are generally commercially available.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsections (d), (i)(5), (j)(6), and (k), the Commission changed the final semi-colon to a period. In subsection (h), the Commission moved the comma after “Public” inside of the closing quotation mark. In subsection (i)(3), the Commission inserted the final semi-colon. The Commission inserted commas after the words “enforcement” in subsection (a), “hole” in subsection (c)(1), “sift” in subsection (c)(6)(1), “sifting” in subsection (c)(6)(iii), “in” and “license” in subsection (d)(1)(i), “in” in subsection (d)(2), “overhangs” in subsection (d)(2)(vii), “vaults” in subsection (d)(2)(ix), “road” in subsection (e), “thereon” in subsection (f)(1)(i), “over” in subsection (f)(2), “hole” in subsection (f)(2)(ii), “wash” in subsection (f)(2)(iii), “overhead” and “free-standing” in subsection (f)(2)(v), “wheelbarrows” in subsection (f)(2)(vii), “through” in subsection (f)(3)(iii), “safety” in subsection (f)(3)(iii)(B), “subdivision” in subsection (g), “fees” in subsection (j)(1), “fees” in subsection (j)(2), “salaries” in subsection (j)(4), “vehicles” in subsection (k), “way” in subsection (l), “pollutant” in subsection (m), “life” in subsection (m)(2), and “format” in subsection (o) pursuant to 1 CMC § 3806(g).

§ 155-20.1-010 Powers and Duties

(a) Specific powers. The Department shall have all powers provided it by law to ensure compliance with the requirements of the regulations in this subchapter, including but not limited to:

- (1) Inspection at reasonable times;
- (2) Use of or entry upon private land incidental to works temporarily undertaken;
- (3) Giving of notices;

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (4) Granting of permits;
 - (5) Conduct of hearings and issuance of orders; and
 - (6) Levying of fines, penalties, and suspension and/or revoking of permits.
- (b) Enforcement and delegation of power. The regulations in this subchapter shall be read to authorize their enforcement by the Department and any other instrumentality of CNMI government, including but not limited to, the Office of a Mayor, as provided by agreement with the Department.
- (c) Public safety. The Department may request the assistance of the Department of Public Safety in enforcing the provisions of the regulations in this subchapter and/or protecting the public health, safety, and welfare with respect to them.
- (d) Determinations as orders. The Department shall issue its determinations whenever practicable as orders, which shall be titled and numbered.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words “penalties” in subsection (a)(6) and “safety” in subsection (c) pursuant to 1 CMC § 3806(g).

Part 100 - Public Rights-of-way

§ 155-20.1-101 Public Rights-of-way; In General

- (a) The public rights-of-way available for Commonwealth roads, streets, and other rights of way shall be held inviolate for Commonwealth right-of-way purposes, except as provided in the regulations in this subchapter.
- (b) These regulations shall not interfere with the following publicly beneficial use by the following entities, as provided herein:
- (1) The entities:
 - (i) The CNMI government and/or its political subdivisions, agencies, and instrumentalities;
 - (ii) A public utility; and/or
 - (iii) A private telecommunication entity.
 - (2) The use:
 - (i) Use of a public right-of-way for the purpose of laying or erecting pipelines, sewers, wires, cables, poles, ditches, drains, railways, for a public purpose, under an existing agreement or permit, or such agreement or permit hereinafter made by the Department or pursuant to a statute or regulation;
 - (ii) Provided that:
 - (A) Such use does not interfere with the public’s use of the property, as provided in these regulations, except for reasonable interferences during permitted construction; and

(B) No private telecommunication or electrical cable or wire shall be placed in, on, or over the right-of-way until the person seeking to do so first had secured a permit and provides a bond or similarly secure undertaking payable to the Department in an amount to be determined by the Secretary.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsection (b)(1)(i) and (b)(2)(i), the Commission inserted the final semi-colon. The Commission inserted commas after the words “streets” in subsection (a), “agencies” in subsection (b)(1)(i), and “on” in subsection (b)(2)(ii)(b) pursuant to 1 CMC § 3806(g).

§ 155-20.1-105 Prohibition on Closure of Public Right-of-Way

(a) No person shall close a public right-of-way. Except that a person may secure from the Department a permit to close a public right-of-way to a limited extent for public purposes over limited periods of time.

(b) An unauthorized closure of a public right-of-way is a public nuisance, and, for the purposes of the regulations in this subchapter, may be treated as an encroachment and/or obstruction.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-110 Prohibition on Encroachments, Impairments, and/or Obstructions

(a) No person shall encroach upon, obstruct, or impair a public right-of-way. Except that a person may secure from the Department a permit to obstruct, impair, or encroach upon a public right-of-way.

(b) It is unlawful for any person to commence work in a public right-of-way until DPW has approved the application and until a permit has been issued for such work, except as specifically provided to the contrary in this specification. Duration of the permit shall be set at the time of issuance of the permit. If work is not completed pursuant to Permit Application, the permit will expire. An extension may be applied for and must be issued prior to commencement of any further work. An unauthorized encroachment upon, impairment or an obstruction of, a right-of-way is a public nuisance.

(c) The Department shall issue a “Cease and Desist Order” directed to any person or persons doing or causing any work to be done in the public way without a permit. Any person found to be doing any work in the public way without having obtained a permit, shall be required to pay

TITLE 155: DEPARTMENT OF PUBLIC WORKS

the applicable permit fee and penalties authorized by these regulations. Unless otherwise explicitly stated, nothing in the regulations in this subchapter shall be construed to require as a precondition to the Department's determining an encroachment or obstruction:

- (1) The notification thereof to the encroaching or obstructing person;
 - (2) A special injury; or
 - (3) A financial loss.
- (d) The determination of an impairment, obstruction or encroachment shall be without regard to:
- (1) Degree or type;
 - (2) Permanence or temporary nature;
 - (3) Whether the property interest obstructed or encroached upon is claimed to be in fee, or through lease, license, designation, or easement;
 - (4) Whether the impairment, obstruction or encroachment is in fact owned, leased, pledged, designated, or licensed; and
 - (5) Whether a person directly created the impairment, encroachment, or obstruction him/herself or employed another to do so, or was employed by another to do so.
- (e) It is unlawful for any person to erect a fence, scaffold, or other structure, or to occupy or use any portion of a public way for the storage of construction or landscaping material and/or equipment without first making application for and receiving a permit from the Department. The permit may set forth such restrictions and or conditions as the Department deems necessary or appropriate in its sole discretion. No fence construction and no building material shall remain in place in any public way after the ending date of the permit.
- (f) Nothing in these regulations shall be construed to prohibit the valid and authorized exercise of the rights of free speech and assembly, as provided under the U.S. and Commonwealth Constitutions and the laws of the Commonwealth

Modified, 1 CMC § 3806(d), (f), (g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words "designation" in subsection (d)(3) and "designated" in subsection (d)(4) pursuant to 1 CMC § 3806(g).

Part 200 - Permits for Closure or Restriction from Department for Public Purposes

§ 155-20.1-201 Power and Authority

The Department may, by permit, provide for the closure of a public right-of-way to some, but not all, uses for public purposes.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for

TITLE 155: DEPARTMENT OF PUBLIC WORKS

120 days from January 12, 2004).

§ 155-20.1-205 Prohibition on Closure for Private Purpose

The Department may not permanently close a public right-of-way for private purposes.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-210 Permits

The Department shall provide an application form for a permit to close a public right-of-way. Any person may seek a permit. The Department may grant a permit for the following purposes and reasons, as requested or with conditions. Conditions may include, but are not limited to, the provision of a bond, deposit, undertaking, or other security.

(a) Bases for granting a permit.

(1) Short term permit. The Department may grant a permit for a period less than 8 days for a person who seeks to hold an event of a temporary nature for substantially public purposes, including:

(i) A parade, assembly, speech making, or cultural or religious event;

(ii) A festival, fair, or other public amusement; or

(iii) An event of a cultural or familial nature that is limited in duration and for which a suitable private venue is not available.

(2) Long term permit. The Department may grant a permit for a period greater than seven days for a person who seeks to hold an event of a temporary, but repeating, nature for substantially public purposes, including a festival, fair, market, cultural presentation, or other public amusement.

(b) Special use district permanent permit.

(1) For a special use district which has been declared by the Governor:

(i) The Department may grant a permanent permit for a person who seeks to provide to the public an integrated group of uses of a repeating nature.

(ii) The Department shall grant a permanent permit to an instrumentality of the Commonwealth for the use of a special use district, including but not limited to planning and/or improvement districts for the Garapan District designed to create a pedestrian mall and related facilities, and/or drainage treatment, and/or cultural center and related facilities.

(2) In order to issue a permanent permit, the Department shall determine that the proposed use/s will likely:

(i) Be accessible to the public;

(ii) Enhance the character of the district;

(iii) Contribute to the CNMI's economic or cultural development;

(iv) Reasonably balance the uses of the public and the needs of contiguous businesses and residences;

(v) Not unreasonably burden public agencies to provide utility or public safety services.

(3) A subdivision of the Department tasked with construction and/or maintenance may apply for such a permit.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

(4) The permanent permit shall be subject to review for renewal, termination, or modification on a periodic basis. For the first year such review shall be conducted on a quarterly basis. For succeeding years such review shall be conducted on an annual basis.

(c) Notice of permit applications. The Department shall provide notice of a permit request to the Secretary of a Department directly affected by the permit, and, upon request, to the offices of the local Mayor and the Governor. In all cases the Department shall provide notice of the permit request to the Secretary of the Department of Public Safety.

(d) Objections to a permit. A person having an interest in the closure of a right-of-way and objecting to closure shall have the right to complain to the Department, pursuant to the procedures provided in the regulations in this subchapter for complaints.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: With respect to the references to the “Secretary of the Department of Public Safety” in subsection (c), see Executive Order 94-3 (effective August 23, 1994) reorganizing the Commonwealth government executive branch, changing agency names and official titles, and effecting numerous other revisions. E.O. 94-3 § 106(a) designates the Commissioner of Public Safety as the head of the Department of Public Safety.

The Commission inserted commas after the words “undertaking” in the initial paragraph, “fair” in subsection (a)(1)(i), “presentation” in subsection (a)(2), and “termination” in subsection (b)(4) pursuant to 1 CMC § 3806(g).

Part 300 - Permits for the Obstruction, Impairment, or Use of a Public Right-of-way

§ 155-20.1-301 Applications for and Granting of a Permit

(a) A person seeking to impair, obstruct, or encroach upon a public right-of-way shall obtain a permit from the Department. The Department shall provide for permit applications, forms, and fees. Any person desiring to perform any work of any kind within a public right of way shall be subject to these regulations and shall make application for a permit. Such application shall be filed with the Department. Any work involving installation or alteration in the public right of way will require plans, traffic plans, and specifications showing the proposed work in sufficient detail to permit determination of (such relationship and compliance); and the application shall not be approved until such plans or sketches are filed with and approved in writing by the Department. The Department may deny issuance of permits to contractors, utility companies, or other permit applicants who have shown by past performance (or lack thereof) that they will not consistently conform with Department requirements.

(b) A traffic plan must be submitted by the permittee together with its application. Permittee’s traffic plan must be in conformance with current "MUTCD" and approved in writing by the Department prior to excavation, construction, or any occupation of the public right-of-way.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Modified, 1 CMC § 3806(g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word “forms” pursuant to 1 CMC § 3806(g).

§ 155-20.1-305 Public Notice of Application for a Permit to Encroach

The Department may, when it deems appropriate, require or provide for the publication, including or limited to posting, of a request for a permit. In deciding whether to require publication, the Department shall consider the impact on the public, the extent of public use of the location, type of use, the permit requestor’s history for and ability to follow permit conditions, length of use, and likely cost of publication.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-310 Time Limits

The Department shall act on a request for a permit with reasonable expediency. If no technical investigation is required, the permit decision shall be made as a determination within seven days.

Modified, 1 CMC § 3806(e), (g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-315 Procedure; Form for Application

- (a) The Department shall develop forms for requesting a permit.
- (b) The forms shall secure the information which is reasonably necessary for the Department to render an accurate, balanced, and fair decision. Forms shall include a provision for swearing that the statements made to secure the permit are true and correct and made upon the penalties for perjury.

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-320 Conditions for Issuance of a Permit

- (a) The Department may condition the issuance of a permit on the payment of a fee, a

TITLE 155: DEPARTMENT OF PUBLIC WORKS

security deposit, bond, and/or undertaking, and public liability insurance.

(b) Where the applicant seeks to modify physically the public right-of-way, or where the Department reasonably anticipates expenses to supervise or monitor the requested use, the Department shall require the payment of a refundable security deposit.

(c) Where no modification of the public right-of-way is intended or likely, the amount of the deposit and/or insurance shall not be so high as to unreasonably interfere with the exercise of a First Amendment right.

(d) Applicants shall provide evidence of liability insurance naming the Commonwealth as an additional insured in such amounts as may be requested by the Department in its sole discretion.

(e) Security for permits and permitted uses.

(1) Persons desiring to perform work in the public way shall be properly licensed in the Commonwealth of the Northern Mariana Islands and shall post a performance bond. The bond amount shall be in an amount no less than the greater of 150% of the total contracted cost of the permitted work or \$50,000, and shall remain in full force and effect for a period of one year after the date the work is completed and accepted by the Department in writing. A single bond may be posted by a permittee to guarantee performance for one or more permits if approved by DPW and agreed to, in writing, by the bonding company. The minimum bond amount shall be assessed based on the number of permits issued to each permittee.

(2) Such bond or undertaking shall be calculated to cover the Department's costs in:

- (i) Completing, repairing, and/or maintaining a site or an excavation and/or other works in order to place property in no worse a state than prior to the permitted activity; and
- (ii) Compensating persons for torts directly related to and caused by the works for the placement.

(f) Specifications. All rights-of-way shall be restored in accordance with Department specifications as set forth in Schedule 320.1

(g) Permit Closeout: Upon completion of project, permittee shall Inform DPW of project completion and request for final inspection. A final closeout report and acceptance by DPW shall be issued upon satisfaction of work.

(h) Safety. Permittee must be in compliance with Occupational Safety & Health Administration (OSHA) on job site. Workers/employees have a right to a safe workplace.

Modified, 1 CMC § 3806(f).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "insurance" in subsection (e)(1) pursuant to 1 CMC § 3806(g).

TITLE 155: DEPARTMENT OF PUBLIC WORKS

§ 155-20.1-325 **Name of Permittee**

The Department shall issue the permit in the name of the applicant and/or other party it deems responsible. In the case of a road cutting permit, the Department shall issue the permit in the name of both the beneficiary of the permit and the contractor performing the permitted work (ex. Commonwealth Utilities Corporation AND contractor) both of whom shall be jointly and severally liable for violations and/or defects in restoration construction.

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-330 **Fees**

(a) For road cutting permits DPW shall charge and the Permittee shall pay upon issuance of the permit, fees for costs associated with the work performed under the permit as outlined in the Fee Schedule located at subsection (d). Such costs could include costs for reviewing the project and issuing the permit, inspections of the project, deterioration of the Public Way, or diminution of the useful life of the Public Way, and other costs associated with the work to be done under the permit. All costs shall be assessed in a non-discriminatory manner. Additional charges to cover the reasonable costs and expenses of any required engineering review, inspection, and work site restoration associated with each undertaking may be charged by DPW to each permittee, in addition to the permit fee. For other Use Permits, the Department may charge a fee for a permit that is reasonably calculated to cover the costs indicated below. Provided, however, that the Department may charge no more than the following for the following purposes:

- (1) Use periods of less than one day or CNMI agency: No charge.
- (2) Use periods of less than four days: No more than \$50;
- (3) Use of a special district or specially designated events area: No more than \$500.

(b) The costs upon which a permit fee may be based are for:

- (1) Issuing the requested permit;
- (2) Supervising, as required, the permitted activity;
- (3) Publication of notice;
- (4) Required investigation or technical review; and/or
- (5) The conduct of a hearing.

(c) For the purpose of this section the Department shall create and maintain for public inspection a list and description of special districts and specially designated events areas, and the permit fees for each.

(d) Fee Schedule.

Description:	Fee:
Application	\$25
Road Cutting and Restoration	\$100

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Site Inspection	\$100
Re-Inspection	\$50
Final Inspection Per Location	\$100
Amendment to Permit	\$25

Modified, 1 CMC § 3806(a)–(b), (f)–(g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In codifying 38 Com. Reg. 39115, the Commission relocated Schedule 330.1 to subsection (d) pursuant to 1 CMC 3806(a)–(b).

§ 155-20.1-335 Revocation, Suspension, and Penalties

(a) The Department shall deny or revoke a permit for any of the following reasons:

(1) Discovery that false or misleading information was given on an application, or material facts were omitted from an application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;

(2) The permittee was or has become ineligible to obtain a permit;

(3) Any cost or fee required to be paid by the regulations in this subchapter has not been paid;

(4) The permittee knowingly provides, or with the exercise of due diligence should have known that s/he was providing, the permitted use to another person who uses the right-of-way in violation of the terms of a permit;

(5) The use of the permit will result, or has resulted, in an unsafe or hazardous condition, or a condition injurious to the public health, safety, or welfare;

(6) The permittee knowingly denies, or through the exercise of due diligence should have known that he/she was denying, access to law enforcement personnel or Department personnel during business hours to any portion of the permitted premises;

(7) The permittee attempts to transfer a permit or any interest in a permit;

(8) The permittee fails to maintain the premises in the condition provided in the permit;

(9) The permitted use will violate, or has violated, a statute, ordinance, rule, or regulation of the CNMI; and/or

(10) The permittee has knowingly violated the terms of another Department permit and there is no evidence that the permittee will follow the requirements of the requested permit.

(11) Provided that, notwithstanding any other provision of these regulations, for violations of 2 CMC §§ 4133-36 (cutting and trenching roads) any person who violates these code provisions shall be denied a permit until such person complies with the provisions.

(b) The Department may revoke a permit for any of the following reasons:

(1) The permittee knowingly uses, or with due diligence should have known that the permittee was using, the right-of-way in violation of the terms of a permit;

(2) The permittee attempted to transfer his/her permit or any interest in his/her permit to

TITLE 155: DEPARTMENT OF PUBLIC WORKS

someone else without prior Department approval;

(3) Another application for a permit to do the same thing or the application for the renewal of a permit to do the same thing was denied and the administrative denial became final; or

(4) Any cost, fee, or fine required to be paid has not been paid.

(c) The Department shall revoke a permit for any of the following reasons:

(1) Discovery that false or misleading information or data was given on any application, or material facts were omitted from any application. False or misleading information does not include information which the applicant reasonably believed, after exercising due diligence, was correct at the time of the application;

(2) The permittee has become ineligible to obtain a permit;

(3) The permittee knowingly denies, or through the exercise of due diligence should have known that s/he was denying, access to law enforcement personnel or personnel of the Department during business hours to any portion of the permitted premises; or

(4) The permittee has been found by the Department to have violated the terms of the permit more than twice within a period of twenty-four months, not including any period of suspension.

(d) A person whose permit is revoked shall be ineligible to receive a permit for one year from the date of revocation. For this purpose, "person" includes the permittee, its owner/s and principals, a relative thereof, and/or another person owned or controlled by them.

(e) The Department may either fine a permittee, suspend a permit, or both fine and suspend, for any of the following reasons:

(1) Any cost, fee, or fine required to be paid has not been paid;

(2) The permittee fails to maintain the permitted premises in the condition contemplated by the permit or in a safe condition;

(3) The permit has otherwise been violated;

(4) There is a ground for suspension of the permit; or

(5) There is a ground for revoking the permit.

(f) The Department shall immediately suspend a permit if it finds:

(1) A ground for revocation.

(2) The permittee has apparently violated the terms of the permit, and the public safety, health, or welfare requires immediate suspension.

(g) Fine for failure to obtain a permit. The Department shall fine a person who should have secured, but did not secure, a permit. Any fine may be appealed to the Secretary of the Department within 30 days of issuance thereof.

(h) Penalties for violation. Upon finding a violation the Department may:

(1) Impose a civil fine of up to five hundred dollars per day; and/or

(2) Suspend the permit for periods of not less than seven days and no longer than twenty-eight days.

(3) Provided that, for violations of 2 CMC §§ 4133-36 (cutting and trenching roads) the penalties shall be as set forth in:

TITLE 155: DEPARTMENT OF PUBLIC WORKS

(i) Civil Fines.

Description:	First Offense:	Second Offense:	Third Offense:
2 CMC § 4133—Permit Required	\$500	\$2,000	\$5,000
2 CMC § 4134—Permit Application	\$500	\$2,000	\$5,000

(ii) Civil Penalty.

Description	Amount:
2 CMC § 4135—Repair of Road	Per Day Penalty not less than \$150 or \$250

(i) Violation of Specifications.

(1) If DPW Inspectors determine construction practices and/or materials, i.e. backfill, road base, asphalt and/or concrete, do not meet specifications, the DPW Inspector may:

- (i) Suspend or revoke the permit;
- (ii) Issue a stop work order;
- (iii) Order removal and replacement of faulty work;
- (iv) Require an extended warranty period;
- (v) Negotiate a settlement to be applied toward future maintenance costs; and/or
- (vi) Make demand upon the permittee’s bond to correct faulty work.

(2) Settlement of trench backfill, road base, asphalt, and/or concrete will be incontrovertible evidence of inadequate compaction of fill materials.

Modified, 1 CMC § 3806(a)–(b), (d), (g).

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsection (a)(4), the Commission changed “known the” to “known that” to correct a manifest error. In subsection (b)(1), the Commission changed the final period to a semi-colon to ensure consistent punctuation. In subsection (h)(3), the Commission changed “as be” to “be as” to correct a manifest error. The Commission corrected the spelling of “permittee” throughout this section. The Commission inserted commas after the words “safety” in subsection (a)(5), “rule” in subsection (a)(9), “fee” in subsections (b)(4) and (e)(1), and “health” in subsection (f)(2) pursuant to 1 CMC § 3806(g).

In codifying 38 Com. Reg. 39115, the Commission changed “Section 4922” to “2 CMC § 4133” and “Section 4923” to “2 CMC § 4134” in (h)(3)(i) and “Section 4924” to “2 CMC § 4135” in (h)(3)(ii) pursuant to 1 CMC 3806(c).

§ 155-20.1-340 [Reserved]

History: Amdts Adopted 39 Com. Reg. 39587 (Apr. 28, 2017); Amdts Proposed 38 Com. Reg. 39115 (Dec. 28, 2016); Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-345 Finality

TITLE 155: DEPARTMENT OF PUBLIC WORKS

A determination shall become final if not appealed within thirty days.

Modified, 1 CMC § 3806(e).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-350 Stays of Determination

The fact that the Department's determination or a trial court's judgment relating to the Department's determination is being appealed shall not automatically stay or have other effect, and the determination shall stand until such time as the judgment of the trial court is reversed. The Department, the Secretary, or a court may, upon application, stay a determination of the Department.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "Secretary" pursuant to 1 CMC § 3806(g).

Part 400 - Complaints

§ 155-20.1-401 Encroachment or Obstruction of Public Right-of-way

Any person may complain to the Department about or against an encroachment or obstruction of a public right-of-way. Provided that the Department shall not make the filling out of a form by a member of the public a necessary condition for making a complaint.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission created the section titles in this part.

§ 155-20.1-405 Department Action

Any person aggrieved by the Department's action under the regulations in this subchapter may complain to the Department and shall be given the opportunity for a hearing.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-410 Complaint Forms; Record Keeping

TITLE 155: DEPARTMENT OF PUBLIC WORKS

The Department shall provide forms and record-keeping for complaints.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-415 Special Injury Not Required

The Department shall entertain the complaint against an encroachment or obstruction without regard to whether the complainant has suffered a special injury.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-420 Party to Hearing

A complainant shall have the right to participate as a party in a hearing on the complaint.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Part 500 - Removal of Encroachment or Obstruction; Procedures and Remedies

§ 155-20.1-501 Removal of an Encroachment or Obstruction

(a) In order to remove an encroachment or obstruction to a public right-of way the Department shall use the standard removal procedure described in § 155-20.1-510, except as provided otherwise.

(b) Except, if the Secretary finds that exigent circumstances require expedited removal of an encroachment or obstruction to a public right-of-way the Department may utilize the expedited procedure described in § 155-20.1-501. In order to find exigent circumstances the Secretary must certify that expedited removal is required to:

- (1) Respond to a health or safety emergency;
- (2) Eliminate a condition creating substantial immediate risk of harm;
- (3) Protect the surface, bed, or structure of the right-of-way and that delay would allow the material degradation thereof;
- (4) Provide for works designed to protect the public health or safety; or
- (5) Advance a public works project designed to benefit the public safety, health, or welfare and that, on balance, the public benefits in proceeding on an expedited basis outweigh the costs of following the standard removal procedure.

Modified, 1 CMC § 3806(c), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for

TITLE 155: DEPARTMENT OF PUBLIC WORKS

120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words “bed” in subsection (b)(3) and “health” in subsection (b)(5) pursuant to 1 CMC § 3806(g).

§ 155-20.1-505 Remedies and Procedure for Remedies

(a) Removal

(1) An unauthorized encroachment or obstruction shall be removed and remediated, and, upon the Department’s determination, at the owner’s expense.

(2) An unauthorized encroachment or obstruction which provides a serious and immediate interference or impairment shall be removed immediately and, upon the Department’s determination, at the owner’s expense.

(3) The Department may order the encroaching or obstructing person to remove and remediate, or it may remove and remediate the encroachment or obstruction itself, through: its staff; by agreement for the use of the staff of another instrumentality of the Commonwealth government; and/or through a contractor.

(b) Costs, expenses, and fees

The Department may recover the costs of remediation from the person who caused the obstruction or encroachment, and/or may secure a lien against the offending real estate, if any, in the amount thereof.

(c) For injury to a person’s property proximately caused by negligent, reckless, or excessive removal or remediation which the Department has caused, the Department may compensate:

(1) By paying money;

(2) By repairing the injury and/or replacing the injured property;

(3) By replacing the injured property with property of substantially similar value and use; and/or

(4) By providing a formal apology.

(d) Entry upon adjoining private land. If the Secretary finds exigent circumstances, as provided in these regulations, § 155-20.1-501(b), and notice is given thereafter pursuant to these regulations, § 155-20.1-510(a)(2), the Department, or other responsible public agency, may enter upon lands adjoining a public right-of-way:

(1) For the purpose of opening any existing drain, or for digging a new drain, for the free passage of water for the drainage of a public or private right-of-way;

(2) To drive piles, throw up embankments, or to perform any other work necessary to keep a drain within the proper channel, and to prevent the flow of drain water, or related erosion, upon public or private rights of way, or upon other private property;

(3) Or enter upon lands adjoining a private right-of-way, which during the time of high water flow is subject to overflow from a drain, to remove or change the position of a fence or other obstruction which is preventing the free flow of water to or through a drain or other public right-of-way; and/or

(4) Enter upon lands adjoining a private right-of-way to remove, close, cap, or otherwise terminate an outflow of sewage or other wastewater which may harm the public.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Modified, 1 CMC § 3806(c), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission changed “Or enter upon lands” to “Enter upon lands” in subsection (d)(4) to correct a manifest error. The Commission inserted commas after the words “expenses” in subsection (b) and “cap” in subsection (d)(4) pursuant to 1 CMC § 3806(g).

§ 155-20.1-510 Procedures for Removal of Obstructions and/or Encroachments, and for Suspensions, Revocations, and Fines

(a) Standard procedure for removal.

(1) Except as otherwise provided in the regulations in this subchapter, the Department shall provide a person with notice and the opportunity for a hearing prior to action to remove an obstruction and/or encroachment. Such hearing shall be conducted in order to provide a speedy, final, and effective determination of the limited matters governed by this subchapter.

(2) Notice. Ordinarily reasonable advance notice shall be mailed to the last known address of the owner of, or other person responsible for, the obstruction and/or encroachment and shall be posted on or near the obstruction and/or encroachment in a conspicuous place.

(3) Hearing. Except as otherwise provided in this subchapter, the Department shall provide a person with the opportunity for a contested case hearing that comports with the requirements of the Administrative Procedure Act, 1 CMC §§ 9108-13; and

(4) The Department shall determine with respect to the action, and any hearing requested shall address:

- (i) The location of the encroachment or obstruction which gives rise to the proposed action;
- (ii) A short summary of the action and the reasons for it;
- (iii) Whether the location is in a public right-of-way, or whether Department has another, superior right to the interest in real property on which the obstruction or encroachment is present;
- (iv) The nature of the person’s property interest;
- (v) The public need for removal of the obstruction or encroachment;
- (vi) The Department’s related proposed works, if any;
- (vii) The schedule for the Department’s related proposed works, if any;
- (viii) The respective costs to the parties of government action and/or inaction;
- (ix) The effect of removal on the person’s property;
- (x) The public interest for and/or against the proposed works, if any;
- (xi) The damages and/or other injuries to the parties, if any; and
- (xii) Whether the Department shall take the proposed action.

(5) A Department or other government employee having personal knowledge of the relevant circumstances shall attest by signature that the determination is true and correct to the best of his/her knowledge, information and/or belief.

(b) Summary pre-removal hearing.

(1) Upon the Secretary’s determination that expedited removal is required, but that the time allows and the public safety, health, and welfare will not be adversely affected, the Department may hold a summary pre-removal hearing, the issues of which shall be limited to:

- (i) The location of the encroachment or obstruction which gives rise to the proposed action;

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (ii) A short summary of the action and the reasons for it;
 - (iii) Whether the location is in a public right-of-way, or whether Department has an other*, superior right to the interest in real property on which the obstruction or encroachment is present;
 - (iv) The public need for removal of the obstruction or encroachment;
 - (v) The schedule for the Department's related proposed works, if any;
 - (vi) The effect of removal on the person's property; and
 - (vii) Whether the Department shall take the proposed action.
- (2) The Department shall give the best notice which it determines feasible in the circumstances;
- (3) The Department shall provide the opportunity for a full, contested case hearing after an action for removal is taken.

(c) Expedited procedure for removal before a hearing.

Upon the Secretary's determination that exigent circumstances require an expedited proceeding, the Department may immediately, without a pre-hearing, remove the obstruction and/or encroachment if:

- (1) It gives the best notice which it determines feasible in the circumstances; and
- (2) It provides as soon as convenient to the owner of, or other person responsible for, the obstruction and/or encroachment, and/or other claimant, the opportunity for a post-removal hearing that otherwise follows the standard procedure of this subchapter for removal.

(d) Procedures for suspensions, revocations, and fines.

- (1) With respect to revoking or suspending a permit or imposing a fine or other penalty, the Department shall provide a person with notice and the opportunity for a hearing.
- (2) Except as otherwise provided in this subchapter, the Department shall provide a person with the opportunity for a contested case hearing prior to its action, a hearing which comports with the requirements of the Administrative Procedure Act, 1 CMC §§ 9108-9113. Except that, if the Department finds exigent circumstances, it may make a prehearing determination to suspend, providing the permittee with immediate notice of the determination and an expedited opportunity to respond after the action is carried out, and the opportunity for a contested case hearing.

(e) Waiver. Failure to appear at the contested case hearing, or timely effort to secure an excused absence and rescheduled hearing, shall waive the right to contest the action.

(f) Immediate effect. A determination and/or order of the Department shall take immediate effect unless stayed by the Department, the Secretary or the reviewing court.

(g) Notice of effect and appellate procedures. The Department shall, in its final order or other final determination, give notice to the affected party of the party's right to appeal, the place/address of the appeal, and the time within which the appeal must be filed.

(h) If no internal administrative appeal to the Secretary is timely filed, and no good cause is shown to excuse the failure to appeal timely, the determination of the Department shall become final.

(i) Enforcement of penalties.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (1) The Department may enforce its penalties to the extent provided by law.
- (2) The Department shall secure the assistance of the Attorney General to implement its penalties through any action in the Superior Court.

* So in original.

Modified, 1 CMC § 3806(d), (f), (g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: In subsection (d)(2), the Commission corrected the spelling of “permittee.” The Commission inserted commas after the words “find” in subsection (a)(1), “health” in subsection (b)(1), “revocations” in subsection (d), and “appeal” in subsection (g) pursuant to 1 CMC § 3806(g).

Part 600 - Notices and Service; In General

§ 155-20.1-601 Service

Unless otherwise specifically stated in the regulations in this subchapter, service can be made on the person, the person’s resident agent, or, if neither can be determined, upon the property. Service may be accomplished by first class mail, return receipt, personal delivery followed by a sworn certificate of service, or by a commercial mailing service that generates a return receipt. A party may waive service, or agree to service by fax or electronic mail.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission created the section title.

§ 155-20.1-605 Notice

Ordinarily notice shall be given at least 14 days prior to the hearing or action date. Such notice may be served to the address provided on a person’s permit application, or, if one is not available, to the last known address of the permittee, and, if a fax or email address was provided on the application, by either a fax or email copy with a report of receipt generated. If mail or personal service is not feasible, the Department may post the notice on or near the permitted property in a conspicuous place.

Modified, 1 CMC § 3806(g).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

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

§ 155-20.1-610 Notice for Expedited or Summary

Proceeding Notice for an expedited or summary proceeding may be accomplished by the best method available at the time to give actual notice of proceedings or an action within the time required. This may include personal oral or written notice, telephone notice, fax, or email. The person giving notice shall swear to it thereafter in a written certificate of service. Service by fax or email shall be evidenced by an electronic return receipt or the recipient's acknowledgment.

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "fax" pursuant to 1 CMC § 3806(g).

Part 700 - Claims Against Department; Appeals to Secretary; Other Remedies

§ 155-20.1-701 Claims Against the Department or the Secretary Affecting Personalty or Real Property

(a) The regulations in this subchapter shall not change the statutory or common law scope of the sovereign or other immunity, or waivers of limitations thereof, applicable to the Commonwealth, its departments, agencies, political subdivisions, and/or other instrumentalities.

(b) Claims arising out of actions contemplated by or governed through these regulations shall be filed against the "Department of Public Works" or the other Commonwealth instrumentality which the Department has designated to carry out the action.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted a comma after the word "divisions" pursuant to 1 CMC § 3806(g).

§ 155-20.1-705 Appeals to the Secretary of Department Determinations and Other Actions

(a) A person who is aggrieved by a determination of the Department or other action made pursuant to this subchapter shall file an appeal to the Secretary within 14 days of the issuance of the order or other action complained of. The person shall serve a copy on each party to the matter within seven days of the filing. The time in which to file the appeal is jurisdictional.

(b) No particular form of pleading or letter is required, provided that the appeal shall include:
(1) Name, address, telephone, email if available, and/or other contact information for the appellant or his/her representative;

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (2) The docket number and caption or title of the matter appealed from, including the other parties;
 - (3) The location of the incident which gave rise to the complaint to the Department;
 - (4) A short summary of the controversy and the Department's decision;
 - (5) The reasons for the appeal and relief requested;
 - (6) A statement signed "under the penalty of perjury" that the matters stated in the appeal are true and correct to the appellant's knowledge and belief, and that a copy is being timely served upon other parties to the matter; and
 - (7) A request that the Secretary rule on the appeal.
- (c) The Secretary may provide an appeal form, specify the number of copies of appeal materials to be filed, identify the required supporting information, and provide for the details of the appeal proceedings, including conferences and hearings. Unless otherwise granted by the Secretary, there shall be no evidentiary hearing or oral argument in the appeal proceedings. The Secretary shall provide the opportunity for briefs, memoranda, or other written comments, replies thereto, and may provide for rebuttal, to the end that all parties may be heard.
- (d) The Secretary shall affirm, deny, modify, or remand.
- (e) Notice of effect and appellate procedure. The Secretary shall, in his/her order or other final determination, give notice of the party's right to appeal to the courts, the place/address of the appeal, and the time within which the appeal must be filed.

Modified, 1 CMC § 3806(d), (e).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Commission Comment: The Commission inserted commas after the words "memoranda" in subsection (c) and "appeal" in subsection (e) pursuant to 1 CMC § 3806(g).

§ 155-20.1-710 Other Remedies

Nonexclusive remedy and exhaustion. A remedy under the regulations in this subchapter shall not be the exclusive remedy of a person or of the Department aggrieved by an encroachment or obstruction. Provided that a party seeking either a remedy against an encroachment or an obstruction governed by these regulations, or against a party availing itself of a remedy under these regulations, shall first exhaust their remedies hereunder.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

Part 800 - Miscellaneous Provisions

§ 155-20.1-801 Construction of These Regulations

In construing the regulations in this subchapter, the singular shall mean the plural, and the plural the singular, the male shall indicate the female and the female the male, and either shall also apply to a non-natural person.

Modified, 1 CMC § 3806(d).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

§ 155-20.1-805 Severability

If any provision of the regulations in this subchapter or any application thereof to any person or circumstances is held invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or application of these regulations which can be given effect without the invalid provision or application; and to this end the provisions of these regulations are declared to be severable.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 26 Com. Reg. 22816 (June 24, 2004); Proposed 26 Com. Reg. 22293 (Apr. 23, 2004); Proposed 26 Com. Reg. 21865 (Feb. 23, 2004); Emergency and Proposed 26 Com. Reg. 21535 (Jan. 22, 2004) (effective for 120 days from January 12, 2004).

**CHAPTER 155-30
SOLID WASTE MANAGEMENT DIVISION**

**SUBCHAPTER 155-30.1
SOLID WASTE COLLECTION AND DISPOSAL REGULATIONS**

Part 001	General Provisions	Fees	
§ 155-30.1-001	Definitions		
Part 100	Tipping Fees	Part 200	Solid Waste Revolving Fund
§ 155-30.1-101	Tipping Fees at Commonwealth Solid Waste Facilities	§ 155-30.1-201	Allocation of Funds for Sub-accounts within the Solid Waste Revolving Fund
§ 155-30.1-105	Payment System		
§ 155-30.1-110	Waiver of Tipping		

Subchapter Authority: 1 CMC § 2404; 2 CMC § 3514.

Subchapter History: Amdts Adopted 26 Com. Reg. 21773 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 20001 (Feb. 28, 2003) (effective for 120 days from Feb. 3, 2003); Amdts Adopted 26 Com. Reg. 21772 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 19952 (Jan. 31, 2003) (effective for 120 days from Jan. 8, 2003); Amdts Adopted 24 Com. Reg. 19399 (July 29, 2002); Amdts Proposed 24 Com. Reg. 19125 (May 20, 2002); Adopted 22 Com. Reg. 17280 (June 20, 2000); Proposed 22 Com. Reg. 17200 (Apr. 20, 2000); Proposed 21 Com. Reg. 16986 (Nov. 15, 1999); Proposed 21 Com. Reg. 16945 (Oct. 15, 1999).

Commission Comment: PL 1-8, tit. 1, ch. 15, codified as amended at 1 CMC §§ 2401-2405, creates the Department of Public Works (DPW) within the Commonwealth government. See 1 CMC § 2401. 1 CMC § 2404 directs the Department to adopt rules and regulations regarding those matters over which it has jurisdiction. PL 6-30 (effective May 23, 1989), the “Commonwealth Solid Waste Management Act of 1989,” is codified as amended at 2 CMC §§ 3511-3521.

PL 6-30, as amended by PL 11-103 (effective Sept. 29, 1999) and PL 13-42 (effective Dec. 19, 2002), governs the collection, disposal, and management of solid waste in the CNMI. 2 CMC § 3514(a) empowers DPW to collect and dispose of solid waste as provided in the act, assess fees by regulation for the collection and disposal of solid waste and establish rules and regulations to enforce its powers.

Part 001 - General Provisions

§ 155-30.1-001 Definitions

The following phrases in the regulations in this subchapter shall be defined as follows:

- (a) “Commercial Waste Haulers”: Any person, business, or government agency or other entity who transports municipal solid waste generated by others.
- (b) “Large Commercial and Self-haulers”: Any hauler delivering 10 or more tons per day of waste to the facilities on a monthly average.
- (c) “Small Commercial and Self-haulers”: Any hauler delivering less than 10 tons per day of waste to the facilities on a monthly average.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

- (d) “Self-haulers”: Any person, business, or government agency or other entity that transports municipal solid waste generated exclusively by their own operations.
- (e) “Commonwealth Solid Waste Management Facilities”: Landfills dumps, refuse transfer stations, recycling centers, composting operations, and other waste receiving facilities operated by the Commonwealth of the Northern Mariana Islands Department of Public Works, Division of Solid Waste Management.
- (f) “Compacted Load”: A load that is hauled in a vehicle or container which is equipped with a hydraulic mechanism, or is designed to be used in conjunction with a hydraulic ram mechanism which compresses the load in order to maximize the amount of material that can be hauled in the vehicle or container. All other loads shall be considered to be uncompacted.
- (g) “Construction and Demolition Waste” (“C&D”): Largely inert solid waste resulting from the construction, demolition, or razing of buildings, roads, or other structures, or from the clearing of land. Includes materials such as concrete, rock, brick and masonry, asphalt, wood, roofing and roofing paper, gypsum board, plaster, steel, and minor amounts of other metals. Construction and demolition waste does not include clean-up materials contaminated with hazardous substances, friable asbestos, waste paints, solvents, sealers, or similar materials.
- (h) “Friable Asbestos Containing Material”: Any material containing more than one percent friable asbestos (as defined under U.S. Code, Title 15, Section 2642) by weight.
- (i) “Garment Waste”: Refuse generated by businesses that are engaged in the processing of textiles and/or the manufacture of garments and that primarily contains textile scraps.
- (j) “Green Waste”: Trees, leaves, brush, grass clippings, landscape waste, yard trimmings, and other similar plant material. Does not include land clearing debris mixed with dirt or rock.
- (k) “Household Refuse”: Solid waste (including garbage, trash, and sanitary waste in septic tanks) generated by residents directly as a result of their occupation or maintenance of their households. Does not include special wastes such as white goods, tires, or batteries.
- (l) “Land Clearing Debris”: Material generated as the result of clearing land-for construction. Primarily dirt, rock, and vegetative material. Does not include municipal refuse or construction demolition waste.
- (m) “Municipal Solid Waste”: All refuse, discards or other, no longer useable, material generated through normal residential, agricultural, commercial, and industrial activities. Includes, but is not limited to: household waste, vegetative and animal waste generated by agricultural operations, commercial solid waste, non-hazardous sludge, conditionally exempt small quantity hazardous waste, construction and demolition waste, and industrial solid waste.
- (n) “Residential Disposer”: An individual homeowner who hauls refuse generated from his own residence. Does not include self-haul waste from multiple units such as apartment

TITLE 155: DEPARTMENT OF PUBLIC WORKS

complexes, barracks or other multi-family dwellings, or agricultural waste hauled from agricultural properties which include residences.

(o) “Special Waste”: Solid waste, which due to its potential impact on public health and or the environment, requires special handling and additional environmental controls. Special wastes include, but are not limited to, junk cars, scrap tires, used lead acid batteries, white goods, used motor oil, dead animals, infectious medical waste, and sewage sludge.

(p) “White Goods”: Appliances which are predominately made of metal and greater than one cubic foot in volume. Includes such items as refrigerators, washers, dryers, water heaters, air conditioners, and ranges.

Modified, 1 CMC § 3806(d), (e), (f).

History: Adopted 22 Com. Reg. 17280 (June 20, 2000); Proposed 22 Com. Reg. 17200 (Apr. 20, 2000); Proposed 21 Com. Reg. 16986 (Nov. 15, 1999); Proposed 21 Com. Reg. 16945 (Oct. 15, 1999).

Commission Comment: The Commission inserted commas after the words “business” in subsections (a) and (d), “operations” in subsection (e), “demolition,” “roads,” and “sealers” in subsection (g), “trimmings” in subsection (j), “trash” and “tires” in subsection (k), “rock” in subsection (l), “commercial” in subsection (m), and “conditioners” in subsection (p) pursuant to 1 CMC § 3806(g).

Part 100 - Tipping Fees

§ 155-30.1-101 Tipping Fees at Commonwealth Solid Waste Facilities

(a)(1) For the receipt and disposal of solid waste delivered to Commonwealth solid waste management facilities by any business, industry, governmental agency, or educational institution, a tipping fee, based on weight, if the facilities are equipped with operable vehicle scales or based on volumetric assessment, if the facilities are not equipped with operable vehicle scales, shall be charged to the disposer as specified in subsections (b) through (c) inclusive.

(2) The tipping fees for Commonwealth solid waste facilities not equipped with operable vehicle scales are based on base fee rates of approximately \$25.00 per ton for municipal and household waste, \$35.00 per ton for garment waste, and \$35.00 per ton for hazardous waste and standard volumetric solid waste conversions of 250 lbs./cu.yd. for uncompacted waste and 500 lbs/cu.yd. for compacted waste. For loads above 2 cubic yards, the charges above will be imposed based on the capacity of the vehicle regardless of whether it is fully loaded or not. The tipping fees for Commonwealth solid waste facilities equipped with vehicle scales are based on base fee rates of \$25.00 per ton for municipal and household waste, \$35.00 per ton for garment waste, and \$35.00 per ton for hazardous waste. Separate fees shall be assessed for a trailer and the vehicle towing it if both the trailer and the towing vehicle are carrying solid waste.

(b) Municipal and Household Solid Waste - \$25 per ton

Typical Vehicle or Container Type	General Volume	Tipping Fee
55 gal. drum (approx. 1/3 cubic yard)	3 or less drums	\$2.00
	4 to 6 drums	\$5.00

TITLE 155: DEPARTMENT OF PUBLIC WORKS

	7 to 8 drums	\$10.00
	more than 8 drums	\$5.00/2 drums
Pick up truck or other passenger vehicle	less than one cubic yard	\$2.00
	1 to 2 cubic yards	\$5.00
	2 to 4 cubic yards	\$10.00
Flat bed, trailer, or overloaded pick up truck	less than 3 cubic yards	\$10.00
	3 to 5 cubic yards	\$15.00
	5 to 8 cubic yards	\$25.00
Dump truck or large trailer	less than 5 cubic yards	\$15.00
	5 to 10 cubic yards	\$30.00
	10 to 15 cubic yards	\$45.00
Compactor truck	less than 5 cubic yards	\$25.00
	5 to 10 cubic yards	\$50.00
	10 to 20 cubic yards	\$100.00
Roll-off container	less than 10 cubic yards	\$30.00
	10 to 20 cubic yards	\$55.00
	20 to 30 cubic yards	\$80.00
	30 to 40 cubic yards	\$105.00

(c) Garment Waste - \$35 per ton

Typical Vehicle or Container Type	General Volume	Tipping Fee
55 gal. drum (approx. 1/3 cubic yard)	3 or less drums	\$4.00
	4 to 6 drums	\$7.00
	7 to 8 drums	\$14.00
	more than 8 drums	\$7.00/2 drums
Pick up truck or other passenger vehicle	less than one cubic yard	\$4.00
	1 to 2 cubic yards	\$7.00
	2 to 4 cubic yards	\$14.00
Flat bed, trailer, or overloaded pick up truck	less than 3 cubic yards	\$14.00
	3 to 5 cubic yards	\$22.00
	5 to 8 cubic yards	\$35.00
Dump truck or large trailer	less than 5 cubic yards	\$22.00
	5 to 10 cubic yards	\$42.00
	10 to 15 cubic yards	\$64.00
Compactor truck	less than 5 cubic yards	\$35.00
	5 to 10 cubic yards	\$70.00
	10 to 20 cubic yards	\$140.00
Roll-off container	less than 10 cubic yards	\$42.00
	10 to 20 cubic yards	\$77.00
	20 to 30 cubic yards	\$112.00
	30 to 40 cubic yards	\$147.00

(d) Special Waste and Construction and Demolition Waste - \$35 per ton - provided, however, that \$35.00 fee for dead animal disposal per animal regardless of weight and volume.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Typical Vehicle or Container Type	General Volume	Tipping Fee
55 gal. drum (approx. 1/3 cubic yard)	3 or less drums	\$4.00
	4 to 6 drums	\$7.00
	7 to 8 drums	\$14.00
	more than 8 drums	\$7.00/2 drums
Pick up truck or other passenger vehicle	less than one cubic yard	\$4.00
	1 to 2 cubic yards	\$7.00
	2 to 4 cubic yards	\$14.00
Flat bed, trailer, or overloaded pick up truck	less than 3 cubic yards	\$14.00
	3 to 5 cubic yards	\$22.00
	5 to 8 cubic yards	\$35.00
Dump truck or large trailer	less than 5 cubic yards	\$22.00
	5 to 10 cubic yards	\$42.00
	10 to 15 cubic yards	\$64.00
Compactor truck	less than 5 cubic yards	\$35.00
	5 to 10 cubic yards	\$70.00
	10 to 20 cubic yards	\$140.00
Roll-off container	less than 10 cubic yards	\$42.00
	10 to 20 cubic yards	\$77.00
	20 to 30 cubic yards	\$112.00
	30 to 40 cubic yards	\$147.00

(e) \$35.00 flat fee for dead animal disposal.

(f) Pre-sorting of Garment Material for Recycling

(1) Upon the commencement date of the Pilot Garment Recycling Project, all garment manufacturers in the CNMI shall deliver all garment waste to the recycling facility located at the rear of the Department of Public Works (DPW), Technical Services Division (TSD) building in Lower Base, Saipan, MP. In order to facilitate the operation of this project and prior to delivery of any garment waste to the recycling facility, all garment manufacturers are required to separate their garment waste into four categories. The categories are:

- (i) White fabric - 100% cotton
- (ii) Colored fabric - 100% cotton
- (iii) 60% or more cotton
- (iv) All others.

(2) All other types of municipal solid waste (MSW) (normal garbage) must be removed from the garment waste prior to delivery. Plastics, cardboard, and household waste will not be accepted. Any loads found to be sorted improperly or contaminated with other types of MSW will be rejected and will not be accepted at either the DPW/recycling site or at any solid waste facility including Puerto Rico Dump and the Marpi Landfill. These loads will require re-sorting to be acceptable. Any load that is rejected by the operator of the recycling facility due to contamination from kitchen and other type of wet trash or otherwise contaminated with plastic, cardboard, and other garbage that cannot be pre-sorted must return to the scale house at the transfer station to be assessed an additional thirty-five dollars per ton prior to disposal at any waste management site including but not limited to the Puerto Rico Dump and the Marpi

TITLE 155: DEPARTMENT OF PUBLIC WORKS

Landfill.

(3) Tipping fees will be collected at the DPW/recycling site. Fee assessment will continue to be based on volume until such time as the Lower Base Refuse Transfer Station (LBRTS) is operational. At that time, haulers will be required to report to the scale house at the LBRTS to have the loads weighed prior to delivery to the DPW/recycling site.

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

History: Amdts Adopted 26 Com. Reg. 21772 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 19952 (Jan. 31, 2003) (effective for 120 days from Jan. 8, 2003); Amdts Adopted 24 Com. Reg. 19399 (July 29, 2002); Amdts Proposed 24 Com. Reg. 19125 (May 20, 2002); Adopted 22 Com. Reg. 17280 (June 20, 2000); Proposed 22 Com. Reg. 17200 (Apr. 20, 2000); Proposed 21 Com. Reg. 16986 (Nov. 15, 1999); Proposed 21 Com. Reg. 16945 (Oct. 15, 1999).

Commission Comment: The first and last paragraphs were not designated. The Commission designated subsections (a) and (e) and re-designated subsections (b) through (d) accordingly. The 2002 amendments repealed and reenacted this section in its entirety. The January 2004 amendments added subsection (f). The January 2004 notice of adoption states that it adopts “an Amendment to the Solid Waste Collection Disposal Regulations, Section 2 to require pre-sorting of all garment material prior to delivery to recycling locations which were published in the Commonwealth Register Vol. 24, No. 05, on May 20, 2002, beginning at page 19125... .” The cited May 2002 regulations were previously adopted. See 24 Com. Reg. 19399 (July 29, 2002). The intent to adopt the amendment to section 2 published at 25 Com. Reg. 19952 (Jan. 31, 2003), which requires the pre-sorting of garment materials for recycling, is clear and the Commission has incorporated the proposed amendments as subsection (f).

In subsection (a)(1), the Commission changed “subsection” to “subsections” to correct a manifest error. In subsections (e) and (f)(1)(iv), the Commission inserted the final periods. In subsection (f)(3), the Commission changed “weighted” to “weighed” to correct a manifest error.

The Commission inserted a comma after the word “cardboard” in subsection (f)(2) pursuant to 1 CMC § 3806(g).

§ 155-30.1-105 Payment System

(a) **Payment of Fees:** Tipping fee charges incurred at the Commonwealth solid waste facilities, whether or not they are equipped with scales, operable or not, under this section shall be paid on site, either in cash, by coupons or invoiced to an established account. Fees of \$10.00 or less may be paid in cash. All fee charges over \$10.00 must be paid by pre-purchased coupons or invoiced to an established account.

(b) All commercial waste haulers shall be required to register with the Department of Environmental Quality. In addition, any large self-hauler wishing to establish an account with the Division of Solid Waste Management must register with the Department of Environmental Quality. Prior to purchase of disposal coupons from the Division of Solid Waste Management, all commercial waste haulers shall be required to show proof of current registration.

(c) **Payment by Coupons:** Pre-paid coupons for payment of fees at Commonwealth solid waste facilities may be purchased from the Commonwealth of the Northern Mariana Islands Division of Solid Waste Management. Commonwealth solid waste facilities will not accept cash payments for tipping fees for fees in excess of \$10.00. Commonwealth solid waste facilities users must obtain tipping fee coupons from the Division of Solid Waste Management. Coupons shall be presented at the Commonwealth solid waste management facilities to pay the tipping fees for loads of waste to be disposed. Coupons will not be sold at Commonwealth solid waste

management facilities.

(d) **Purchase of Coupons:** Coupons shall be issued in books of five and ten coupons in two U.S. dollar and ten U.S. dollar denominations. All persons, businesses, industries, governmental agencies, institutions, or organizations which intend to dispose of solid waste at a Commonwealth solid waste management facility shall purchase coupons to use at landfill facilities from the Division of Solid Waste Management. Coupons will be sequentially numbered and attached to receipt stubs in the coupon books. Coupons must be presented intact in their books. Loose coupons will not be accepted.

(e) **Establishment of Accounts:**

(1) In order to establish an account with the Division of Solid Waste Management, the waste hauler must be registered with Division of Environmental Quality. The hauler must provide an estimate of waste delivered daily over a six month period, to the PRD (compacted and uncompacted). The Division of Solid Waste Management must verify this amount.

(2) Accounts will be limited to haulers who deliver 10 tons per day or more to the facilities on a monthly average. A deposit based on the estimate of tons per day delivered to the facilities, computed at \$10 per ton, will be required in order to establish an account with the Division of Solid Waste Management. The hauler must provide the Division of Solid Waste Management with the following:

- (i) Owner name
- (ii) Company name
- (iii) Company telephone number
- (iv) Number of vehicles using the facilities
- (v) Identification numbers of all vehicles using the facilities
- (vi) Volumetric capacity of all vehicles using the facilities
- (vii) Verification of registration with the Division of Environmental Quality.

(3) Company name, identification numbers, and volumetric capacity shall be printed clearly on all vehicles.

(4) A 30-day notice must be provided for any new vehicles. Accounts will be billed on a monthly basis, due the 15th of each month. On a quarterly basis, estimates of deposits will be reviewed.

(5) Division of Solid Waste Management will charge by the volumetric capacity of the vehicle, not the load amount.

(f) **Collection of Fees and/or Coupons:** The gate attendant shall assess the volume of all incoming vehicles and based on his/her determination charge the appropriate fee. For fees to be paid by coupons the attendant shall remove the appropriate number of coupons from the coupon book and stamp both the coupons and the receipt stubs. Loose coupons will not be accepted. For haulers with established accounts, invoices will be provided.

(g) **Determination of Volumetric Assessment:** The attendant at the entrance to the facility shall be the sole judge of the capacity of the incoming vehicle. Should there be any disagreement regarding the attendant's determination, the hauler shall file an appeal with the Division of Solid Waste Management where an actual measurement of the container or vehicle capacity will be made.

TITLE 155: DEPARTMENT OF PUBLIC WORKS

(h) **Creation of Coupons:** The Division of Solid Waste Management shall be responsible for the creation and printing of coupons. Coupons shall be numbered to provide a means of monitoring whether forgeries are being created and used. Coupons shall be attached to receipt stubs for tracking of payment by haulers.

(i) The Division of Solid Waste Management shall be responsible for verifying the accuracy of the coupons presented at Commonwealth solid waste facilities. The Division of Solid Waste Management shall issue receipts and shall note the serial number of the coupons issued to tipping fee coupon purchasers. They shall include the name and DEQ registration number (when appropriate) of the purchaser. The Division of Solid Waste Management shall be responsible for all accounting functions relating to the verification of, and accounting of tipping fees generated. The Division of Solid Waste Management shall deposit the proceeds from tipping fee coupons sold into the CNMI general fund.

(j) **Lost Coupons:** Lost coupons shall not be replaced. Disposers who lose coupons shall have to bear the cost of replacing the coupons.

(k) The Department of Public Works, Division of Solid Waste Management shall be responsible for administering the collection of tipping fee coupons at Commonwealth solid waste management facilities.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 22 Com. Reg. 17280 (June 20, 2000); Proposed 22 Com. Reg. 17200 (Apr. 20, 2000); Proposed 21 Com. Reg. 16986 (Nov. 15, 1999); Proposed 21 Com. Reg. 16945 (Oct. 15, 1999).

Commission Comment: The original paragraphs of subsection (e) were not designated. The Commission designated subsections (e)(1) through (e)(5).

In subsection (e)(2)(vii), the Commission inserted the final period. The Commission inserted a comma after the word “numbers” in subsection (e)(3) pursuant to 1 CMC § 3806(g).

§ 155-30.1-110 Waiver of Tipping Fees

Notwithstanding any other provision of the regulations in this subchapter to the contrary, the tipping fees can be waived for refuse generated as a result of a typhoon or other similar natural disaster or for the benefit of the Commonwealth of the Northern Mariana Islands.

(a) The Department of Public Works, Division of Solid Waste Management shall be responsible for administering the waiver provisions in the regulations in this subchapter.

(b) The person, entity applying for waiver of tipping fees shall sign a declaration under penalty of perjury stating that the refuse was generated by a typhoon or describing the public benefit to be gained by granting of a waiver for non-typhoon based refuse and stating the volumetric capacity to be disposed.

(c) The Department of Public Works shall grant a waiver of tipping fees based on the signed

TITLE 155: DEPARTMENT OF PUBLIC WORKS

declaration, provided that the Department of Public Works may establish procedures to verify volumetric capacity and to verify that the refuse was generated by a typhoon or a finding that a public benefit to the Commonwealth by granting of a waiver.

(d) Loads in excess of 1 cubic yard generated from traditional cultures, social and religious activities such as rosaries and fiestas shall be considered in the public benefit and can be waived.

Modified, 1 CMC § 3806(d).

History: Adopted 22 Com. Reg. 17280 (June 20, 2000); Proposed 22 Com. Reg. 17200 (Apr. 20, 2000); Proposed 21 Com. Reg. 16986 (Nov. 15, 1999); Proposed 21 Com. Reg. 16945 (Oct. 15, 1999).

Part 200 - Solid Waste Revolving Fund

§ 155-30.1-201 Allocation of Funds for Sub-accounts within the Solid Waste Revolving Fund

The solid waste revolving fund (SWRF) shall be divided pursuant to the Solid Waste Management Revolving Account Act of 2002 in the following manner:

(a) Saipan sub-account:

- (1) All solid waste tipping fees generated on the island of Saipan
- (2) 80% of the total excise tax designated for SWRF
- (3) All solid waste grants applied for under the Saipan Solid Waste Office
- (4) All advance disposal fees collected for products to be sold on the island of Saipan
- (5) All loans, grants, or other financial assistance designated for activities to happen on the island of Saipan.

(b) Tinian sub-account:

- (1) All solid waste tipping fees generated on the island or islands of Tinian and Aguiguan
- (2) 10% of the total excise tax designated for the SWRF
- (3) All solid waste grants applied for under the Tinian Solid Waste Division
- (4) Any advance disposal fees collected for products to be sold on the island or islands of Tinian and Aguiguan
- (5) All loans, grants, or other financial assistance designated for activities to happen on the island or islands of Tinian and Aguiguan.

(c) Rota sub-account:

- (1) All solid waste tipping fees generated on the island of Rota
- (2) 10% of the total excise tax designated for the SWRF
- (3) All solid waste grants applied for under the Rota Solid Waste Division
- (4) All advance disposal fees collected for products to be sold on the island of Rota
- (5) All loans, grants, or other financial assistance designated for activities to happen on the island of Rota.

(d) Financial assurance sub-account:

- (1) \$400,000.00 per year out of the total excise tax designated for the SWRF. 10% will come

TITLE 155: DEPARTMENT OF PUBLIC WORKS

from the excise tax funds apportioned for Rota, 10% will come from the excise tax funds apportioned for Tinian and 80% will come from the excise tax funds apportioned for Saipan.

(2) Once accumulated, a minimum of \$500,000.00 will be maintained in a savings account that can be accessed immediately. Any additional funds above \$500,000.00 will be maintained in TCD's or other higher interest bearing funds that can be accessed within a 90 day time period.

(3) Funds from this sub-account cannot be used for any other purpose except for the closure/post-closure or any corrective action that may be required for the Marpi Solid Waste Facility or a DEQ permitted landfill in Tinian, Aguiguan, or Rota.

(4) This amount will be annually re-evaluated and adjusted as necessary by the Department of Public Works, Division of Solid Waste Management, to account for updated closure and post-closure costs for the Marpi Solid Waste Facility and any landfill in Tinian or Rota permitted under the CNMI Solid Waste Management Regulations [NMIAC, title 65, chapter 80], as well as any corrective actions that may become required for these facilities under the CNMI Solid Waste Management Regulations.

Modified, 1 CMC § 3806(f), (g).

History: Amdts Adopted 26 Com. Reg. 21773 (Jan. 22, 2004); Amdts Emergency and Proposed 25 Com. Reg. 20001 (Feb. 28, 2003) (effective for 120 days from Feb. 3, 2003).

Commission Comment: The January 2004 amendments added this section. The January 2004 notice of adoption states that it adopts "an Amendment to the Solid Waste Collection Disposal Regulations, to establish a policy regarding allocation and management of the Solid Waste Management Revolving Fund which was published in the Commonwealth Register Vol. 22, No. 04, on April 14, 2000, beginning at page 17200 through 17209..." The cited April 2000 regulations were previously adopted. See 22 Com. Reg. 17280 (June 20, 2000). The intent to adopt the amendments published at 25 Com. Reg. 20001 (Feb. 28, 2003), which establish a policy regarding allocation and management of the Solid Waste Management Revolving Fund, is clear and the Commission has incorporated the proposed amendments in this section.

In subsection (d)(4), the Commission inserted the final period. The Commission inserted commas after the words "grants" in subsections (a)(5), (b)(5), and (c)(5), and "Aguiguan" in subsection (d)(3) pursuant to 1 CMC § 3806(g).