



TERRITORY OF GUAM
OFFICE OF THE GOVERNOR
AGAÑA, GUAM 96910
U. S. A.
EXECUTIVE ORDER NO. 98-11

**RELATIVE TO PROMULGATING EMERGENCY RULES
AND REGULATIONS FOR THE CUSTOMS,
AGRICULTURE, AND QUARANTINE INSPECTION
SERVICES CHARGE.**

WHEREAS, in accordance with §9302 of Title 5, Guam Code Annotated, and pursuant to Section 47143 of the Government Code as amended in Public Law No. 24-14, the attached amendment to Rules and Regulations governing the Customs, Agriculture, and Quarantine Inspection Services Charge are hereby adopted as emergency rules and regulations based upon the following:

1. Section 18 of Chapter III of Public Law No. 23-45, containing Government Code Sections 47143, et seq., mandates the collection of a Customs, Agriculture, and Quarantine Inspection Service Charge by the Antonio B. Won Pat Guam International Airport Authority (GIAA) and the Customs and Quarantine Agency (CQA) upon all air and sea carriers.
2. Section 47149 of the Government Code authorizes the Director of CQA to promulgate rules and regulations to implement Government Code Section 47143, et seq., including rules governing the procedure of collection of the service charges, for periodic review of the costs of providing inspection services and the level of charges levied, and other matters.
3. The Federal Aviation Administration (FAA) Airport District Officer, Western-Pacific Region, U.S. Department of Transportation (DOT), in letters dated November 13, 1995 and January 16, 1996, copies of which are attached hereto and designated as Exhibits A and B, advised that the service charges were not in conflict with Federal Anti-Head Tax Act, (AHTA), §40116 of Title 49, United States Code, however, if the charge amounts exceed the actual costs of providing inspection services, the charges might be considered a prohibited tax under the AHTA, and further, that payment of excess service charges might be considered a prohibited use of airport revenue under §47107(1)(2)(A) of Title 49 United States Code.
4. To avoid violation of these federal laws, the FAA Airports District Officer advised that "the GAA and GCQA must ensure that the level of the service fees do not exceed the costs of providing inspection services at GUM". See Exhibit A.
5. On September 12, 1997, pursuant to Section 27 of Chapter 4, and Exhibit B attached to Chapter 5, of Public Law No. 24-59, the General Appropriation Act for Fiscal Year 1998, the projected cost for providing, maintaining, and operating the service charge facility in relation to air passenger services in Fiscal Year 1998 is \$9,816,058, and thus necessitates



that the current service charge applicable to air carriers be adjusted from \$7.27 to \$6.36 to comply with the AHTA.

6. in accordance with §9302 of Title 5, Guam Code Annotated, and pursuant to Section 47143 of the Government Code as amended in Public Law No. 24-14, the establishment, modification, or adjustment of any service charge levied pursuant to this Section shall be subject of the provisions of the Administrative Adjudication Law.
7. On December 30, 1997, a public hearing was held by the CQA on a proposed amendment to Sections III.A.2 and IV.A.4 of the Customs, Agriculture, and Quarantine Inspection Service Charge rules and regulations, in accordance with the Administrative Adjudication Law.
8. As a result of these amendments, the current service charge of \$7.27 will be reduced to \$6.36 for Fiscal Year 1998.
9. The rates as amended will be in accordance with the advice of the FAA that the service charge not be excessive and thereby not violate the AHTA.
10. Pursuant to the Administrative Adjudication Law, "No rule shall be effective until after. . . ninety (90) days have elapsed from the date of filing with the Legislative Secretary."
11. Allowing the Ninety (90) days elapsed time from the date of filing with the Legislative Secretary will not meet the April 1, 1998 deadline date for the revised Fiscal Year 1998 service charge of \$6.36 to go into effect.
12. Immediate adoption of the proposed amended service charge pending the Ninety (90) days compliance period, on an emergency basis, is necessary to comply with, and abide by, the provisions of the AHTA.

NOW, THEREFORE, I, CARL T. C. GUTIERREZ, Governor of Guam, by virtue of the authority vested in me by the Organic Act of Guam, as amended, do order:

1. The proposed amended rules and regulations attached to this Executive Order and designated as Exhibit C are adopted, and supercede and replace the existing relevant rules and regulations government the Customs, Agriculture, and Quarantine Inspection Services Charge, effective April 1, 1998.

SIGNED AND PROMULGATED at Agana, Guam this 28th day of February, 1998.

Handwritten signature of Carl T. C. Gutierrez.

CARL T. C. GUTIERREZ
Governor of Guam

COUNTERSIGNED:

Handwritten signature of Madeleine Z. Bordallo.

MADELEINE Z. BORDALLO
Lieutenant Governor of Guam