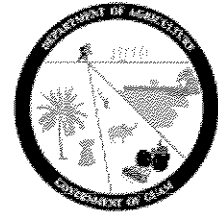




Department of Agriculture Dipattamenton Agrikottura

163 Dairy Road, Mangilao, Guam 96913



Eddie Baza Calvo
Governor

Ray Tenorio
Lt. Governor

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Mariquita F. Taitague
Director

Matthew L.G. Sablan
Deputy Director

May 9, 2014

The Honorable Tina Rose Muna Barnes
Legislative Secretary
Thirty-Second Guam Legislature

32-14-1633
 Date 5-13-14
 Time 4:25 pm
 Received by [Signature]

2014 MAY 13 PM 4:33

RE: Addendum; Attachments to the Proposed New Invasive Species Inspection Fee Regulation as required by P.L. 31-43 dated July 1, 2013 and submitted to the Legislative Secretary on same date (Doc 32 GL-13-0539); Changes to Fee Proposal; Economic Impact Statement; and, Record of Public Hearing Included.

Dear Senator Muna Barnes:

The proposed new invasive species fee regulation has been revised to address concerns of the Honorable Rory Respicio, Senator and Chairman of the Committee on Rules, Federal, Foreign & Micronesian Affairs, Human & Natural Resources, and Election Reform, which he had indicated when it was returned to us on September 30, 2013 and as were discussed at the legislative round table meeting April 15, 2014. My staff has also met again with representatives of the maritime shipping carriers and Chamber of Commerce and were not presented with any substantive objections to the proposed fee.

The proposed fee regulation has been revised to remove any possible conflict with federal law concerning the imposition of the fee on air cargo. Included is a statement concerning the public hearing which was held, and the proposed rules have been reformatted as an appendix to a draft bill as requested. Also, the economic impact statement has been revised and made more comprehensive as was requested.

Thank you for your assistance with this important regulation.

1633 Office of the Legislative Secretary
 Senator Tina Rose Muna Barnes
 Date 5-13-14
 Time 9:04
 Received by [Signature]

[Signature]
 Mariquita F. Taitague
 Director

I MINA'TRENTAI DOS NA LIHESLATURAN GUÅHAN
2014 (SECOND) REGULAR SESSION

Bill No. _____ ()

Introduced by:

Chris M. Dueñas

**AN ACT TO ADOPT THE RULES ESTABLISHING THE
INVASIVE SPECIES INSPECTION FEE.**

1 **BE IT ENACTED BY THE PEOPLE OF GUAM:**

2 **Section 1. Legislative Intent.** Public Law 31-43:3 authorized the Department of
3 Agriculture to promulgate an invasive species inspection fee. The department conducted a public
4 hearing on October 12, 2012 as required by the Administrative Adjudication Law. Following the
5 public hearing, copies of the proposed rules were transmitted to the Compiler of Laws, the Attorney
6 General of Guam and the Office of the Governor for their respective review. Each of the reviews
7 resulted in approval being granted. On July 1, 2013 the rules were received by the Legislative
8 Secretary and were forwarded to the committee having oversight of the department. On September
9 20, 2013 the rules were returned to the department to address concerns raised by the committee. The
10 department has addressed the committee's concerns and on April 23, 2014 re-transmitted the
11 proposed rules for consideration by *I Liheslaturan Guåhan*. It is therefore the intent of *I Liheslaturan*
12 *Guåhan* to adopt Rules appended to this Act as **Exhibit "A"**.

13 **Section 2. Adoption of Rules.** Notwithstanding any other provision of law, rule,
14 regulation and executive order, the Rules establishing the Invasive Species Inspection Fee attached
15 hereto as Exhibit "A", are duly adopted by *I Mina Trentai Dos Na Liheslaturan Guåhan*, and shall
16 be codified under a new chapter 14 of a new Division 4, Title 8 Guam Administrative Rules and
17 Regulations.

18 **Section 3. Severability.** If any provision of this Act, or its application to any person or
19 circumstance is found to be invalid or contrary to law, such invalidity shall not affect other
20 provisions or applications of this Act which can be given effect without the invalid provisions or
21 application, and to this end the provisions of this Act are severable.

1 **Section 4. Effective Date.** This Act shall be effective upon enactment.

1 **EXHIBIT "A"**

2 **"8 GAR – FOOD AND AGRICULTURE**

3 **DIVISION 4**

4 **INVASIVE SPECIES INSPECTION FEE**

5 **CHAPTER 14**

6 **INVASIVE SPECIES INSPECTION FEE**

7 **§ 14100. Fee Established.**

8 The Department of Agriculture establishes a fee for the inspection, quarantine and
9 eradication of invasive species contained in any marine commercial shipments, foreign or
10 domestic, that is brought into Guam. The fee shall be paid by the person responsible for paying
11 the freight charges to the transportation company, who shall collect the fee and forward the
12 payment to the Department of Agriculture; provided that the transportation company shall not be
13 liable for any fee that is not paid by the person responsible for paying the freight charges to the
14 transportation company.

15 **§ 14101. Fee Assessment.**

16 The fee shall be assessed and collected on the net weight of imported freight computed on
17 the basis of 75 cents for every one thousand pounds of freight brought into Guam, or part
18 thereof. Exempted from this assessment is bulk sand and quarried product freight, cement bulk
19 freight, coal bulk freight, or liquid bulk freight. All fees collected shall be deposited into the
20 Guam Invasive Species Inspection Fee Fund and expended as mandated in Public Law 31-43.

21 **§ 14102. Failure to Pay or Remit Assessed Fee.**

22 The following fees shall be imposed for failure to pay, bill, or remit the Guam Invasive
23 Species Inspection Fee provided for above:

- 24 (a) A person responsible for paying the freight charges to the transportation company
25 who fails to pay the fee; or
- 26 (b) A transportation company that fails to:
- 27 (1) Bill the fee, within fifteen days of the delivery of the freight, to the person
28 responsible for paying the freight charges to the transportation company;
- 29 (2) Remit the fee to the Department of Agriculture within forty-five days of
30 collecting the fee from the person responsible for paying the freight charges to

1 the transportation company, shall pay two times the amount of the fee or \$50,
2 whichever is higher.”

ECONOMIC IMPACT STATEMENT

Guam Department of Agriculture, Biosecurity Division

Guam Invasive Species Inspection Fee

A. Background

Section 3 of Public Law 31 – 43, enacted into law on May 17, 2011, authorized the Guam Department of Agriculture to create a Biosecurity Division within the Guam Department of Agriculture for the protection of our natural resources from biological invasion and threats, and the protection of our geographical area from invasion of unwanted organisms. The public law also authorizes the establishment of a fee pursuant to the Administrative Adjudication Law as the source for funding this new division in executing its authority for the inspection, quarantine and eradication of invasive species contained in any freight, including but not limited to, marine commercial container shipments, air freight or any other means of transporting freight, foreign or domestic, that is brought into Guam. The law stipulated that the fee shall be paid by the person responsible for paying the freight charges to the transportation company, which shall collect the fee and forward the payment to the Department of Agriculture at the port of disembarkation. Another provision of the law was that the transportation company would not be made liable for any fee that is not paid by the person responsible for paying the freight charges to the transportation company.

Section 4 of Public Law 31-43 created the Guam Invasive Species Inspection Fee Fund into which all of the fees collected are to be deposited. The law mandated the fees collected shall be expended to

- a. Recruit and hire a Territorial Invasive Species Coordinator;
- b. Establish and provide staffing for a Biosecurity Division within the Department of Agriculture to provide inspection, quarantine and eradication of invasive species contained in any freight brought to Guam;
- c. Suppress and eradicate invasive species present in Guam; and
- d. Develop the Guam Invasive Species Management Plan and its updates.

Section 5 of the law authorized the Department of Agriculture to create a Biosecurity Division which will take the lead role for the Government of Guam in efforts

towards prevention, control, monitoring, rapid response, eradication, enforcement, and education of the public concerning invasive species in Guam.

In order for the Department of Agriculture to establish a fee in accordance with the above stated requirements, an economic impact statement must be prepared in accordance with 5 Guam Code Annotated, Section 9301. This section of the Administrative Adjudication Law requires that six specific areas be addressed in the economic analysis. These six specific areas are delineated below in the analysis section.

B. Proposed Fee

The proposed fee is designed to improve funding for the operations of the newly created Biosecurity Division of the Department of Agriculture. The proposed fee is closely modeled on a similar fee imposed a few years ago by the State of Hawaii, Department of Agriculture, and amendments thereto. The fee is established for the inspection, quarantine and eradication of invasive species contained in marine commercial container shipments and certain other means of transporting freight, foreign or domestic, which is brought into Guam. The fee shall be paid by the person responsible for paying the freight charges to the transportation company, who shall collect the fee and forward the payment to the Department of Agriculture at the port of disembarkation; provided that the transportation company shall not be liable for any fee that is not paid by the person responsible for paying the freight charges to the transportation company.

The fee shall be assessed and collected on the net weight of imported freight computed on the basis of 75 cents for every one thousand pounds of freight brought into Guam, or part thereof. Exempted from this assessment is bulk sand and quarried product freight, cement bulk freight, coal bulk freight, or liquid bulk freight. Also exempted from this assessment is cargo transported by aircraft, the assessment of which is preempted by federal law. All fees collected shall be deposited into the Guam Invasive Species Inspection Fee Fund and expended as mandated in Public Law 31-43. The proposal also includes a penalty for non-compliance: The following fees shall be imposed for failure to pay, bill, or remit the Guam Invasive Species Inspection Fee provided for above:

- (1) A person responsible for paying the freight charges to the transportation company who fails to pay the fee; or
- (2) A transportation company that fails to :
 - i. Bill the fee, within fifteen days of the delivery of the freight, to the person responsible for paying the freight charges to the transportation company;

- ii. Remit the fee to the Department of Agriculture within forty-five days of collecting the fee from the person responsible for paying the freight charges to the transportation company,
Shall pay two times the amount of the fee or \$50, whichever is higher.

Fee Analysis

1. Purpose and Need

Guam has suffered serious environmental degradation due to invasive species since World War II and continues to be invaded with new alien species every year. The brown tree snake's effects on Guam is one of the most well-known and documented instances of such ecological destruction worldwide. Guam's position as a transportation hub and its island nature make it especially vulnerable to invasive species introductions and their adverse effects on the environment and economy. Recent serious introductions include the Asian cycad scale and coconut rhinoceros beetle. Species such as these can destroy and/or upset the native forest environment and affect the tourism industry by making it much more difficult and expensive to maintain Guam as a tropical paradise destination. Guam is threatened by other, even more dangerous species that have not found their way here yet. Some of these could completely destroy Guam's tourism industry, impact public health, and cut the economy to a small fraction of what it now is.

Funding has never been adequate to develop and maintain a modern and comprehensive biosecurity system to stem the flow of invasive species into Guam's environment, and to do something about those species that do manage to escape initial detection at the ports of entry. The only way to protect Guam from the serious threats that it faces, and to protect its society, people and environment, is to implement a fee to provide such an improved and modern biosecurity system. The proposed fee is imposed on imported cargo since that is how most invasive species reach the island.

2. Financial Impact

The proposed new fee is 75 cents per 1000 pounds of imported cargo. Anticipated fees generated amount to \$2.0 million annually, and shall be expended to fund the hiring of necessary personnel, capital equipment, supplies, contractual services and off-island travel where justified. This fee will have little to no effect on those persons or corporate entities directly affected by the proposed fee. As shipping companies assess the fee to its customers little administrative costs will be absorbed for this purpose.

The financial impact upon the people and economy of Guam will be negligible as it is an insignificant amount. On average, the fee would amount to about \$33 on a forty-foot sea container load of cargo. This is a small percentage of total transportation costs¹, which

fluctuate much more than this due to fluctuations in fuel costs. Moreover, the fee will be permanent in nature and within a few months customers will become accustomed to this fee and support knowing such fees will fund improved protection from invasive species, thereby saving the people and economy of Guam from substantial ongoing and future losses.

Aggregate total revenue from the proposed fee is forecasted to be on average \$2.0 million per year going forward. This is based upon the past years reported by the Port Authority of Guam. As you'll note below, 85 percent of fees generated will come from containerized cargo and the remaining from break/bulk cargo. All such cargo will receive increased inspection scrutiny and biosecurity controls under this program.

Table 1. Calculated fees generated if in place from Fiscal Years 2007 thru 2010, for break/bulk and containerized cargo tons reported. Break/bulk and Containerized values are in tons.

Fiscal Year	Break/Bulk Domestic	Fee\$	Break/bulk Foreign	Fee\$	Total Fees\$
2007	13,063	19,594.00	113,364	170,046.00	189,640.50
2008	10,100	15,150.00	93,236	139,854.00	155,004.00
2009	9,853	14,779.50	98,622	147,933.00	162,712.50
2010	12,102	18,153.00	154,444	231,666.00	249,819.00

Break/bulk Annual Average = \$189,294.00

Fiscal Year	Container Domestic	Fee	Container Foreign	Fee	Total Fees\$
2007	877,204	1,315,204.00	235,113	352,669.50	1,688,475.50
2008	949,245	1,423,867.50	223,592	335,388.00	1,759,255.50
2009	883,892	1,325,838.00	228,196	342,294.00	1,668,132.00
2010	981,190	1,471,785.00	223,702	335,533.00	1,807,338.00

Containerized Annual Average = \$1,725,800.25

Aggregate Four (4) Year Average = \$1,915,094.25

The fees generated would increase with increased shipping activity thus allowing increased inspection efforts to be applied to the increased risks imposed by increased amounts of cargo imported. This will be especially important with expected increases in shipping due to a military buildup or more general increased economic activity.

Since the new fee is projected to initially generate about \$2 million per year, the Department of Agriculture, Biosecurity Division is proposing to initially expend that amount of funds annually in the following manner:

<u>Description</u>	<u>Total Requested</u>
New or Vacant Staffing, Plant Inspection Section	\$594,753
New Staffing, Invasive Species Section	448,833
Operations	110,000
Emergency Response Fund Set Aside	100,000
New Port Inspection Facility Set Aside	<u>750,000</u>
Total	\$2,003,586

First year expenditures are expected to be somewhat less due to the time necessary to recruit and hire new staff, procure new items, and initiate new or expanded programs.

3. Potential Increase or Decrease in Cost of Living

Although, the fee will be passed through to consumers in the form of conceivably higher prices, it will be minimal, and have a negligible impact upon the cost of living on Guam or any specific increase in the price or availability of any good or service.

Table 2. The effect of this fee on observed retail prices given selected examples.

Product	Price before Fee	Fee	Price Incl. Fee
Canned Spam (12 oz.)	\$ 2.99	\$0.0005	\$ 2.99
Dozen Eggs (26 oz.)	\$ 2.79	\$0.0012	\$ 2.79
Beef (1 lb.)	\$ 4.99	\$0.0075	\$ 4.99
Rice (50 lbs)	\$23.99	\$0.0375	\$24.03
Butane Gas Tank (25 lbs)	\$48.00	\$0.0187	\$48.02
Compact Car (2295 lbs)	\$15,999.00	\$1.7212	\$16,000.72

4. Direct or Indirect Impact upon Employment

The proposed fee will have a small beneficial impact upon employment on Guam because it is expected that the Department of Agriculture, Biosecurity Division will hire additional staff to establish a more comprehensive and effective biosecurity system. The proposed filling of new or vacant staffing indicated in Part 1 above would consist of nine personnel in the Plant Inspection Section including an Invasive Species Coordinator as

required in P.L. 31-43, two scientists, three additional inspectors, and three administrative personnel; in the new Invasive Species Section, hiring would consist of ten new personnel to deal with current and new invasive species problems in the field, generate outreach materials and assist the public.

5. Increase or Decrease in the Cost of Doing Business

The proposed fee will cause a slight increase in the cost of doing business since the fee will necessitate additional billing and collection efforts. However, this should be very minimal since the additional fee can be included by the transportation company in the already existing transportation billing process. Some additional efforts will be necessary for accounting and periodic payments to the Department of Agriculture.

6. Adverse or Beneficial Economic Impacts

There will be an overall beneficial economic impact for the Guam economy by virtue of the improved biosecurity protections that will be implemented using the proceeds of the new fee. It is difficult to quantify this impact since it depends on the degree of success in implementing many new procedures, such as: improved risk analysis and identification of high risk shipments, effective targeting of these highest risk shipments, improved border inspection protocols including the construction and use of better inspection and containment facilities, etc. Implementation of an effective emergency response capability will also have beneficial economic impacts by helping to limit long term control costs for invasive species if the response is initiated quickly enough and is successful in eradicating new invasive species incursions.

¹Retail value of a forty-foot container ranges from \$30,000 to \$300,000 with a median value of \$165,000. Transportation costs range from \$4,500 to \$7,500 with a median of \$6,000. The average weight of such a container load is 44,000 pounds. Proposed fee is 44 times \$0.75 = \$33/container (40ft) = 0.02% of value of container's contents or 0.55% of container transportation costs.



Eddie Baza Calvo
Governor

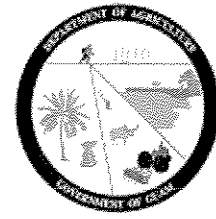
Ray Tenorio
Lt. Governor

Department of Agriculture Dipattamenton Agrikottura

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Email: doagridir@yahoo.com



Mariquita F. Taitague
Director

Matthew L.G. Sablan
Deputy Director

April 18, 2014

The Honorable Tina Rose Muna Barnes
Legislative Secretary
Thirty-Second Guam Legislature

RE: Record of Public Hearing on Department of Agriculture Rules and Regulations relative to the Proposed New Invasive Species Fee Regulation

Dear Senator Muna Barnes:

On October 18, 2012 at 5:30 PM I, Russell K. Campbell, as public hearing officer, convened a public hearing on the Department of Agriculture's proposed new invasive species fee regulation at the Plant Inspection Facility at 17-3306 Neptune Avenue, Tiyan, Barrigada. The public hearing had been advertised in the Marianas Variety (Guam Edition) on September 28, 2012. At the time I convened the hearing, no other person was in attendance. I waited for one hour and still no member of the public had come forward with comments. There had also been no written or verbal comments received at our office up to the time of the hearing and none were received at any time after the public hearing.

Signed,

A handwritten signature in cursive script that reads "Russell K. Campbell".

Russell K. Campbell
Hearing Officer
Entomologist