

Número: 8067
Fecha: 2 de septiembre de 2011

Aprobado: Hon. Kenneth D. McClintock
Secretario de Estado



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Por: Eduardo Arosemena Muñoz
Secretario Auxiliar de Servicios

**BOARD OF DIRECTORS
PUERTO RICO PORTS AUTHORITY
SAN JUAN, PUERTO RICO**

RESOLUTION NUMBER 2011- 026

The Executive Director submitted the following matter for consideration and approval by the Board of Directors:

REQUEST TO AUTHORIZE THE EXECUTIVE DIRECTOR OF THE PUERTO RICO PORTS AUTHORITY TO ADOPT THE REGULATION FOR IMPLEMENTING THE NECESSARY MEANS TO GUARANTEE AN EFFICIENT FLOW OF COMMERCIAL TRAFFIC IN THE SCANNING OF INBOUND CARGO CONTAINERS, TO IMPROVE SECURITY AND SAFETY AT THE PORT FACILITIES, AND/OR TO OTHERWISE IMPLEMENT THE PUBLIC POLICY OF THE COMMONWEALTH OF PUERTO RICO DELEGATED UPON THE PORTS AUTHORITY

Mr. Alberto Escudero, Executive Director of the Puerto Rico Ports Authority (The Authority), explained to the Board of Directors, to adopt the New Container Inspection System Regulation is necessary in order to identify unreported taxable goods and improve security at the ports .

Pursuant to the aforementioned reasons the Authority has determined implementing the New Regulation with an effective date from October 1, 2011 until June 30, 2014.

The Authority published public notices of the Authority's intention to establish a New Container Inspection System Regulation. The New Regulation was made available for public review and invited the general public to submit written comments and be present at the public hearing held on June 15, 2011.

The final determination of the establish the New Regulation complied with the legal procedure.

Attached to this Resolution is the Hearing Officer Report, Roberto E. Vega Pacheco, Esq., who presided the public hearing.

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Having evaluated the arguments made by the Executive Director, the Board of Directors approved the following:

RESOLUTION NUMBER 2011- 026

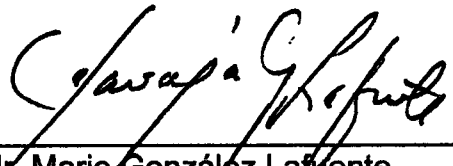
WE HEREBY RESOLVE: To authorize the Executive Director of the Puerto Rico Ports Authority or his delegate to adopt the Regulation for Implementing the Necessary Means to Guarantee an Efficient Flow of Commercial Traffic in the Scanning of Inbound Cargo Containers , to Improve Security and Safety at the Port Facilities and/or to Otherwise Implement the Public Policy of the Commonwealth of Puerto Rico Delegate Upon the Ports Authority, and to approve the report prepared by the Hearing Officer, Roberto E. Vega Pacheco, Esq.

The Authority reserves the right to amend the Regulation established hereunder, if during the period of effectiveness of this Resolution significant changes occur that justify necessary amendments to such rates, fees, rentals and other charges.

In San Juan, Puerto Rico, on this August 31, 2011.



Hon. Rubén A. Hernández Gregorat
Chairman
Board of Directors



Mr. Mario González La Fuente
Secretary
Board of Directors



CERTIFICATION

I, Hilda M. Rodriguez Manzano, Assistant Secretary of the Board of Directors of the Puerto Rico Ports Authority (PRPA), a corporation duly organized and existing under Amendment to Resolution No. 2007-78, by laws of the Puerto Rico Ports Authority, certify the following:

The Puerto Rico Ports Authority (PRPA) Board of Directors on ordinary meeting held on August 31, 2011 authorize the Executive Director of the Puerto Rico Ports Authority or his delegate to adopt the Regulation for Implementing the Necessary Means to Guarantee an Efficient Flow of Commercial Traffic in the Scanning of Inbound Cargo Containers , to Improve Security and Safety at the Port Facilities and/or to Otherwise Implement the Public Policy of the Commonwealth of Puerto Rico Delegate Upon the Ports Authority, and to approve the report prepared by the Hearing Officer, Roberto E. Vega Pacheco, Esq.

The Authority reserves the right to amend the Regulation established hereunder, if during the period of effectiveness of this Resolution significant changes occur that justify necessary amendments to such rates, fees, rentals and other charges.

IN WITNESS WHEREOF, I signed and affixed the corporate seal of the Puerto Rico Ports Authority, this August 31, 2011, San Juan, Puerto Rico.

Hilda M. Rodríguez Manzano, Esq.
Assistant Secretary
Board of Directors



PUERTO RICO PORTS AUTHORITY

REGULATION FOR IMPLEMENTING THE NECESSARY MEANS TO GUARANTEE AN EFFICIENT FLOW OF COMMERCIAL TRAFFIC IN THE SCANNING OF INBOUND CARGO CONTAINERS, TO IMPROVE SECURITY AND SAFETY AT THE PORT FACILITIES, AND/OR TO OTHERWISE IMPLEMENT THE PUBLIC POLICY OF THE COMMONWEALTH OF PUERTO RICO DELEGATED UPON THE PORTS AUTHORITY

ARTICLE I. INTRODUCTION AND LEGAL GROUNDS

A. The Puerto Rico Ports Authority owns, supervises and administers the maritime facilities of the Port of San Juan, through which most of the domestic and foreign products are imported into the Island of Puerto Rico, most commonly inside inbound Cargo Containers. The Puerto Rico Ports Authority has the responsibility of guaranteeing, among others, both port security and an efficient commercial traffic flow. In addition, the Ports Authority must implement and fully comply with its law and contractual obligations.

B. Although these inbound Cargo Containers should include only the items and products disclosed in the Ship's Manifest and/or Bill of Lading, it is a well-known fact that the inbound Cargo Containers may sometimes include undisclosed items and products to be cleverly introduced as contraband into Puerto Rico to avoid paying the applicable excise tax, other related taxes, or otherwise avoid their detection. This practice has a direct and negative effect upon Puerto Rico's tax revenues.

C. On August 2, 2007, the Ports Authority and the Treasury Department entered with several other agencies and instrumentalities of the Government of Puerto Rico into that certain multi-party agreement, whereby the parties, among others things, agreed to cooperate with—and support—the Treasury Department's tax fiscalization efforts. This agreement places the responsibility upon the participant agencies to coordinate and cooperate among each other to implement an efficient tax collection process which affords minimal disturbances to the flow of merchandize arriving at the ports by way of an efficient process.

D. Thereafter, on February 18, 2008, the Commonwealth of Puerto Rico approved Act No. 12 of February 18, 2008, which adopted the purpose, findings, and policy objectives outlined in the multi-party agreement.

E. Subsequently, on February 16th, 2011, the Treasury Department of the Government of Puerto Rico and the Puerto Rico Port Authority signed a Memorandum of Understanding between themselves that sets forth specifically how these two public entities will conform and cooperate in furtherance of such obligations and public policy objectives.

F. In response to the mandate of Act No. 12 and in compliance with the Memorandums of Understanding with the Puerto Rico Treasury Department; the Ports Authority will implement a fast track method of inspecting inbound Cargo Containers which will detect undisclosed taxable goods, as well as increase port security in the Port of San Juan, while preserving a free flow of commerce and the efficient movement of cargo.

G. The fast track method selected by the Puerto Rico Ports Authority is a non-intrusive cargo scanning (imaging) system under which up to 100% of all Inbound Cargo Containers may be scanned. It is an effective method that seeks to maximize the safety and security of the Port of San Juan, and which accommodates the Department of the Treasury's tax fiscalization/collection goals, while preserving an efficient flow of commercial traffic. The inspection process will include any foreign inbound Cargo Containers or foreign cargo that arrives to the island of Puerto Rico, unless the US Custom and Border Protection specifically requests that certain foreign inbound Cargo Container or foreign cargo in a domestic inbound Cargo Container be excluded.

H. These rules shall be known as "The Regulation for Implementing the Necessary Means to Guarantee an Efficient Flow of Commercial Traffic in the Scanning of Inbound Cargo Containers, to Improve the Security and Safety at the Port Facilities and/or to otherwise Implement the Public Policy of the Commonwealth of Puerto Rico delegated upon the Ports Authority" or for short, the "Scanning Regulations." The same are set in accordance with the provisions of Article VI, §§ 2, 6, of the Constitution of Puerto Rico, Act No. 125 of May 7th, 1942 as amended, Act No. 171 of June 28, 1968 as amended, Act No 120 of October 31, 1994, Act No. 12 of February 18, 2008, Act No. 1 of January 31, 2011, and Regulation 7437 of December 14, 2007.

ARTICLE II. PURPOSE AND APPLICATION

This Regulation aims to regulate and govern the procedures at the new inspection facilities to be established by the Puerto Rico Ports Authority in its maritime port facilities at the Port of San Juan. The measure seeks to accommodate the interest of the Department of the Treasury to inspect up to 100% of all Inbound Cargo Containers, in order to identify unreported taxable goods, by a non-intrusive scanning (imaging) system that preserves a free and efficient flow of commercial traffic at the ports. It also seeks to establish the means necessary to improve security and safety at the port facilities, and/or to otherwise advance (or more efficiently advance) the public policy of

the Commonwealth of Puerto Rico outlined in the documents and provisions mentioned above, and/or to improve related services.

ARTICLE III. DEFINITIONS

1. **Cargo Container** - Shall mean all types of containers used to carry cargo freight in ships, regardless of whether the container is empty, but shall not include uncontainerized bulk cargo.
2. **Ship's Manifest** - Means the statement submitted by the Ship Owner or Ship Agent to the different PRPA facilities Regulatory Agencies related to the inbound and outbound cargo delivered. The Ship manifest statement is supported, but not limited to, by bills of lading describing Cargo and weight and any other kind of valid documentation which provides a clear description of type of Cargo and weight conveyed.
3. **Bill of Lading** - Document issued by a Carrier acknowledging that specified goods have been embarking or disembarking as Cargo from one consignee to other, and which involves the use of at least two different types of transportation (for example: land and sea).
4. **Containers** - A truck trailer body that can be detached from the chassis for a loading into a vessel. Containers may be ventilated, insulated, refrigerated or equipped with interior devices. A container may be 20 feet, 40 feet, 45 feet, 48 feet or 53 feet in length, 8'0" or 8'6" in width, and 8'6" or 9'6" in height.
5. **Contraband** - Anything, whether prohibited or not, that has not been properly disclosed in the Ship's Manifest and/or Bill of Lading.
6. **Inspection Lanes** - Sites where the Scanning will be placed.
7. **Enhanced Security Fee** - The fee established to recover all of the costs incurred by the Puerto Rico Ports Authority to: guarantee the free and efficient flow of commerce at the maritime facilities of the Port of San Juan under the non-intrusive scanning process; establish the necessary means to improve effectiveness, security and safety at the port facilities; comply with its legal and contractual obligations; and/or to otherwise implement the means necessary to advance (or more efficiently advance) the public policy of the Commonwealth of Puerto Rico outlined in the documents and provisions mentioned above.
8. **Ship or Vessel Agent** - Person or company authorized to transact business for and in the name of another person or company
9. **Image** - Digital representation of the Cargo by the Scanning portal.

10. Puerto Rico Ports Authority or the Authority- Public Corporation as created by Act No.125 of April 7, 1942, (23 L.P.R.A. 331-352), also identified as the "Authority" or by its acronym "PRPA"

11. Governmental Entity (ies) --- Any of the Commonwealth of Puerto Rico's executive departments, agencies, instrumentalities, administrations, and/ or public corporations, including any of the municipalities of the Commonwealth of Puerto Rico. It likewise means the Federal Government, or any of its executive departments, agencies, instrumentalities, administrations, public corporations, etc, except for the purposes of this Agreement the US Customs and Border Protection ("CBP").

12. Inbound Cargo Containers --- any inbound Cargo Container that arrives to the island of Puerto Rico at the Port of San Juan from any foreign or domestic port which the United States Custom and Border Protection has not specifically requested to be excluded from screening or scanning at the Port of San Juan.

ARTICLE IV. GENERAL RULES

A. To meet the challenge of complying with its legal and contractual duties, while not restricting the free flow of commerce, the Puerto Rico Ports Authority hereby implements and installs a new inspection system using non-intrusive scanning technology with the capacity of scanning of up to 100% of the Inbound Cargo Containers entering the San Juan Port facilities.

B. The new inspection system shall be implemented by installing certain Inspection Lanes at predetermined locations selected by the Authority at the maritime port facilities at the Port of San Juan. During the deployment stage of the new inspection system, the Authority will establish and notify the general public the location of the new Inspection Lanes and the date of commencement of each lane.

C. To the extent feasible, the Authority seeks to provide for the inspection of up to 100% of all Inbound Cargo Containers that arrive at the Port of San Juan, in a manner that will not unduly affect the free flow of commercial traffic—namely, by way of the non-intrusive scanning (imaging) mechanism. The inspections shall be the responsibility of the Treasury Department personnel in the facilities, but providing a free, efficient, and expedited flow of cargo container traffic through and during the inspection process shall be the responsibility of the Port Authority personnel therein. Following closely, to the extent possible, the sequence in which the cargo containers were unloaded from the arriving ship, the Authority will direct each Inbound Cargo Container to the nearest available Inspection Lane; provided, however, that notwithstanding anything else provided herein or in any other applicable statute or regulation, if there is an undue delay and waiting period in any of the Inspection Lanes (for any reason, such as a peak in the inflow of Inbound Cargo Containers at one time), the Authority reserves the right to reduce the percentage of Inbound Cargo Containers to be scanned, to the

percentage that the Authority deems necessary, by randomly selecting among the inbound Cargo Containers that arrive at the Port of San Juan, so as to minimize or eliminate the inspection lane waiting period to an acceptable level that does not unduly hinder the inflow of inbound commerce.

D. The Authority reserves the faculty to exempt from scanning inspection those Inbound Cargo Containers that are from companies that are C-TPAT certified trade partners; provided the C-TPAT trade partner notifies and identifies in writing prior to their unloading, which Cargo Containers are under its control, certifying in writing that the Inbound Cargo Container has been fully controlled and supervised by it at all times.

E. Notwithstanding anything else provided to the contrary in this Regulation, the Authority reserves the faculty, at all times, to allow the inspection by scanning of:

(i) any cargo container subject to a court order from a court of competent jurisdiction requiring its inspection;

(ii) any cargo container that there is just cause grounds to require its inspection;

(iii) any closed cargo container that the Department of the Treasury requires pursuant to its statutory, regulatory and administrative powers.

F. The foregoing dispositions shall not be construed as a limitation upon the Treasury Department to conduct any inspection authorized by regulation or statute.

G. If any agent claims that its Inbound Cargo Containers are being unfairly discriminated against or has any other type of complaint concerning the above scanning process, it may file a complaint at the Administrative Offices of the Authority and commence an adjudicative procedure pursuant to Act No. 170 of August 12, 1988, as amended.

H. If due to the scanning results it is determined that a particular inbound cargo container requires further inspection (including by any other means), unless other applicable statutes and regulations state differently, the Authority will direct the party in charge of the corresponding cargo container to move it quickly from the corresponding Inspection Lane to a specially designated area. The procedures to be followed will depend on the reason for the secondary inspection. Accordingly, the rules and regulations to be followed thereafter will be those of the agency called upon to investigate, depending on the reason for the secondary inspection. Prompt cooperation from the party will be expected to avoid any unnecessary delays in the flow of traffic through the corresponding Inspection Lanes.

I. The Authority reserves the right to enter, from time to time, into memorandum of understandings or other types of agreements, with other Governmental Entities or others to advance the purpose reflected herein.

J. The Enhanced Security Fees set forth below are established to recover, as required by law, all costs incurred by the Authority in providing, repairing and maintaining an efficient scanning system, related operations and areas, in an effort to limit the effect upon the free flow of commerce, as well as providing better security and safety measures and/or related facilities at the Port of San Juan. The Puerto Rico Ports Authority has hired a third party to perform the required scanning services. Puerto Rico Ports Authority reserves the right to delegate the collection of the Enhanced Security Fee process to a private operator or any another entity. This will be notified to the concerned parties by, but not limited to, letter, email or fax.

K. In order to recover costs incurred by the Authority arising from the foregoing, each ship's or vessel's agent with inbound cargo that effectively arrives, and is unloaded, in the Port of San Juan, must pay to the Puerto Rico Ports Authority an Enhanced Security Fee to be calculated as follows:

From effective date until June 30, 2014

Cargo in Containers	\$	4.00	per Ton up to \$69 per container (Exhibit A)
General Cargo	\$	3.25	per Ton
Motor Vehicles	\$	4.00	per Ton
Liquid Cargo handled in Bulk	\$	0.039	per 42 Gallon Barrel
Liquid Sugar and Molasses	\$	0.58	per Ton
Empty Containers or Chassis	\$	4.00	per Unit

ARTICLE VI. GRIEVANCES/JURISDICTION

Any claim or grievance filed by any party in connection with the above process shall commence with an adjudicative procedure pursuant to Act No. 170 of August 12, 1988, as amended. The Ports Authority shall have primary jurisdiction of the grievance and complaint.

ARTICLE VII. AMENDMENTS

This Regulation may be amended in accordance to the procedures laid down in Act No. 170 of August 12, 1988, as amended.

ARTICLE VIII. SEVERABILITY

If any article, provision, part or section of this Regulation, or any of its applications, are declared by a court of competent jurisdiction to be invalid, void or unconstitutional, all other remaining articles, provisions, parts or sections of this Regulation, and their applications, shall continue to be valid and in full force and effect.

ARTICLE IX. EFFECTIVENESS, REPEAL AND APPROVAL

This Regulation shall become effective thirty (30) days after the same is filed at Department of State of the Commonwealth of Puerto Rico.

When this Regulation comes into full force and effect, all other regulations, rules or procedures of the Authority that are in conflict or inconsistent with this Regulation shall be automatically modified, amended or, if necessary, repealed to the extent necessary to avoid the conflict or conform the inconsistency.

The effectiveness of this Regulation shall automatically expire on June 30, 2014, unless such term is extended, modified or amended prior its expiration.

Approved in San Juan, Puerto Rico on _____

Alberto R. Escudero Morales
Executive Director

Exhibit A

The Enhanced Security Fee will be the lessor of the short tons of cargo moving in containers multiplied by \$4 or the total containers with cargo multiplied by \$69.

Example 1:

Containers with cargo	236
multiplied by \$69 cap per container	\$ 69
Total maximum Enhanced Security Fee charged for containers with cargo	\$16,284
Short tons of cargo moving in containers	4,450
multiplied by Enhanced Security Fee of \$4 per short ton	\$ 4
	\$17,800

In this example, the Enhanced Security Fee is **\$16,284** based on the maximum charge for containers with cargo.

Example 2:

Containers with cargo	236
multiplied by \$69 cap per container	\$ 69
Total maximum Enhanced Security Fee charged for containers with cargo	\$16,284
Short tons of cargo moving in containers	3,450
multiplied by Enhanced Security Fee of \$4 per short ton	\$ 4
	\$13,800

In this example, the Enhanced Security Fee is **\$13,800** based on the short tons for cargo moving in containers.



*Estado Libre Asociado de Puerto Rico
Departamento de Estado
San Juan, Puerto Rico*

12 de septiembre de 2011

Sr. Bernardo Vázquez Santos
Sub. Director Ejecutivo
Autoridad de los Puertos
P.O. Box 362829
San Juan, Puerto Rico 00936-2829

Estimado señor Vázquez:

Tenemos a bien informarle que el **11 de septiembre de 2011**, quedó radicado en este Departamento, a tenor con las disposiciones de la Ley Núm. 170 de 12 de agosto de 1988, según enmendada, el siguiente reglamento:

Número: **8067** **Reglamento para Implementar los Medios Necesarios que Garanticen un Flujo Eficiente del Trafico Comercial en la Inspección de los Contenedores de Carga Entrando, para Mejorar la Seguridad de las Instalaciones Portuarias y/o de otra manera para Implementar la Política Pública que el Gobierno de Puerto Rico Delegó en la Autoridad de los Puertos.**

Conforme a la Ley 149 de 12 de diciembre de 2005, el Departamento de Estado radicará una copia a la Biblioteca Legislativa. Incluimos copia del reglamento numerado.

Cordialmente,

Eduardo Arosemena Muñoz
Secretario Auxiliar de Servicios