

TITLE 70: DEPARTMENT OF FINANCE

SUBCHAPTER 70-40.1 BUSINESS LICENSE REGULATIONS

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Subchapter Authority: 1 CMC §§ 2553 and 2557; 4 CMC §§ 5611- 5614.

Subchapter History: Adopted 27 Com. Reg. 25399 (Dec. 30, 2005); Emergency and Proposed 27 Com. Reg. 25011 (Oct. 24, 2005) (effective for 120 days from Oct. 17, 2005); Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); (superseding the Business License Regulations promulgated by the Department of Commerce); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Commission Comment: 1 CMC § 2551 creates the Department of Finance within the Commonwealth government. 1 CMC § 2553(l) authorizes the Department to issue business licenses pursuant to 4 CMC § 5611 and to promulgate rules and regulations to carry out its provisions. 1 CMC § 2553(m) authorizes the Department to suspend, revoke or deny the issuance of business licenses and to promulgate rules and regulations for the purpose of carrying out its provisions. The Department is also generally authorized to adopt rules and regulations regarding those matters within its jurisdiction. See 1 CMC § 2557.

1 CMC § 2571 establishes the Division of Revenue and Taxation (Division), headed by a Chief (now the Director) with supervision over all matters concerning revenue and taxation on a day-to-day basis.

PL 3-11, the "Revenue and Taxation Act of 1982" took effect, with some exceptions on June 1, 1982. Section 503 (formerly codified at 4 CMC § 1503) placed the authority to issue business licenses in the Department of Commerce. PL 9-22 (effective retroactively January 1, 1995), a comprehensive tax reform measure, repealed most of PL 3-11, as amended. PL 9-22 § 1 repealed PL 3-11 § 503 in its entirety. See 4 CMC § 1503 and the comment thereto; see also the comment to 4 CMC § 1101.

PL 9-22 § 3, codified as amended by PL 11-73 at 4 CMC § 5611, reenacted the business license provisions and left the authority to issue business licenses with the Department of Commerce. PL 11-73 (effective March 19, 1999), the "Business Licensing Processing Act of 1998," codified at 1 CMC § 2553(l) and (m), and 4 CMC §§ 5611-5614 completely revised the Commonwealth code provisions regarding business licenses and transferred authority to issue business licenses from the Department of Commerce to the

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Department of Finance. See 4 CMC §§ 5611-5614. PL 11-73 contained findings and purpose provisions as follows:

Section 2. Findings and Purpose. Tax compliance has long been a challenge in the CNMI, due to a lack of central control and sharing of data between various entities. A great deal of inconsistencies will be resolved by centralizing the issuance of business licenses with the agency which issues CNMI Tax Identification Numbers. Such issues that will be resolved include, but are not limited to the following: detecting non-filers of tax returns; ascertaining whether taxes have been paid prior to the issuance of a renewal of business license; allowing the Department of Finance to close down a business if taxes are not paid, or using the same as a deterrent for avoiding payment of taxes; allowing the Department of Finance to verify that a business is engaged in the activity stated on the license by comparing it to the activity stated on the tax return; and assuring that a business which imports good for sale has an active business license and all taxes have been paid before allowing importation of goods into the CNMI.

By allowing the Department of Finance, Division of Revenue and Taxation to issue a business license and at the same time issue the CNMI Taxpayer Identification Number, there will be a tracking mechanism established that will not only serve the Division of Revenue and Taxation, as the point of control, but the Division of Customs and the Department of Commerce as well. The integration of issuing business licenses into the Division of Revenue and Taxation is expected to result in collection of a significant amount of additional taxes that are not collected due to the lack of a single control point. This should provide the CNMI with much needed revenue without the need to raise taxes at this point in time.

It is therefore the purpose of this legislation to transfer the function of issuing business licenses from the Department of Commerce to the Department of Finance in order to strengthen the Department of Finance's efforts to enforce tax compliance. The day-to-day function of issuing licenses within the Department of Finance shall be handled by the Division of Revenue and Taxation.

PL 11-73 § 7, codified at 4 CMC § 5614, authorizes the Secretary of Finance to promulgate rules and regulations to carry out the intent of the act.

The Department of Commerce issued Business License Regulations in 1995. The history of the 1995 regulations follows:

Adopted 17 Com. Reg. 12729 (Jan. 15, 1995); Proposed 16 Com. Reg. 12560 (Nov. 15, 1994); Emergency and Proposed 16 Com. Reg. 12332 (Sept. 15, 1994) (effective for 120 days from Aug. 24, 1994).

After the passage of PL 11-73, the Department of Finance promulgated the Business License Regulations codified in this subchapter.

Part 001 - General Provisions

§ 70-40.1-001 Authority

These regulations in this subchapter are promulgated pursuant to 1 CMC § 2553 and 4 CMC § 5614, as amended by Public Law 11-73 which authorizes the Secretary of Finance to promulgate rules and regulations for purposes of carrying out its duties and responsibilities regarding the issuance of business license. The Department of Finance (the "Department") has jurisdiction over the issuance of business licenses under 1 CMC § 2553 and 4 CMC § 5611, as amended by Public Law 11-73.

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Modified, 1 CMC § 3806(d).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

§ 70-40.1-005 Definitions

For the purposes of the regulations in this subchapter, the following definitions shall apply:

- (a) “Applicant” means any person as defined in subsection (m) who files a written application for a business license with the Department of Finance.
- (b) “Business” means a business as defined in 4 CMC § 1103(c).
- (c) “Bank” means a bank as defined in 4 CMC § 6103(b).
- (d) “Banking business” means a banking business as defined by 4 CMC § 6103(c).
- (e) “Director” means the Director of Revenue and Taxation.
- (f) “Insurance company” means a company so licensed by the Insurance Commissioner which undertakes to indemnify another or pay a specified amount upon determinable contingencies.
- (g) “Insurance broker” means a broker as defined in 4 CMC § 7303(e).
- (h) “Insurance agent” means a general agent as defined in 4 CMC § 7303(a), a subagent as defined in 4 CMC § 7303(b)(1) or solicitor as defined in 4 CMC § 7303(d).
- (i) “License or business license” means the permission granted by the Secretary of Finance, under the authority of the Business Licensing and Processing Act conferring upon the licensee the annual privilege to engage in a business in the Commonwealth.
- (j) “License fee” means the charge or assessment levied by law for the purpose of obtaining a business license or the renewal thereof.
- (k) “Line of business” means each distinct and separate economic activity by a licensee, generally performed at a single physical location, but may be an activity performed at more than one physical location. The Standard Industrial Classification Manual established by the Executive Office of the President of the United States of America, Office of Management and Budget shall be used as a guideline.
- (l) “Manufacturer” means a manufacturer as defined in 4 CMC § 1103(n).
- (m) “Person” means a person as defined in 4 CMC § 1103(q), and including cable T.V.*

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- (n) “Public utility” means a utility as defined in 4 CMC § 1103(r).
- (o) “Registered agent” is an agent as defined in 4 CMC § 4331(b).
- (p) “Scuba diving tour” means a tour as defined in 3 CMC § 5603(c).
- (q) “Scuba instruction” means instruction as defined in 3 CMC § 5603(d).
- (r) “Security dealer” means any person engaged in the business of buying and selling securities for his own account, through a broker or otherwise, but does not include a bank or any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.
- (s) “Secretary” means the Secretary of the Department of Finance.
- (t) “Wholesaler” is a wholesaler as defined in 4 CMC § 1103(aa).

* So in original.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Part 100 - Business License Requirements

§ 70-40.1-101 License Required

- (a) Before engaging in a business in the Commonwealth, a person must first file an application for business license, together with a deposit equal to the business license fee, and obtain from the Secretary a license to engage in that business.
- (b) Once a license is issued, the deposit shall be treated as payment for the license fee and shall be non-refundable regardless of whether the licensee actually conducted a business or not.

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

§ 70-40.1-105 Application Requirement

Every applicant shall complete a business license application adopted by the Secretary which shall include at the minimum the following information as applicable:

- (a) The applicant’s name, address, and telephone number;
- (b) The trade name, assumed name or business name if different from the name of the applicant;

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- (c) The location or locations of the business, including building name, floor and sketch showing the location of the business;
 - (d) The lines of business;
 - (e) The type of business, i.e., partnership, sole proprietorship, nonprofit, or business corporation;
 - (f) Whether the sole proprietor, any partner or a shareholder in a non-publicly traded corporation is a nonresident worker, as that term is defined in 3 CMC § 4412(i), who is subject to the restrictions of 4 CMC § 4337(h)*;
- *So in original; see the commission comment to this section.
- (g) The country or place of incorporation of the corporation;
 - (h) With respect to corporations, the name of the registered agent as defined in 4 CMC § 4331(b), and the address of the registered office of the corporation;
 - (i) All trade names, assumed names, and fictitious names used by the applicant, in conjunction with any activity, business or otherwise;
 - (j) The CNMI taxpayer identification number;
 - (k) The latest annual corporation report which has been filed with the CNMI Registrar of Corporations;
 - (l) The year in which the applicant first commenced business in the Commonwealth under the line or lines of business covered by the application; and
 - (m) Submit a certification from the Workmen Compensation Commission regarding the applicant's compliance with the workmen compensation laws and regulations.
 - (n) Any other additional information which the Secretary deems appropriate.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Commission Comment: The starred citation in subsection (f) is incorrect. 4 CMC § 4337(h) does not exist. The Department probably intended to reference 3 CMC § 4437(h), which restricts the business operations of nonresident workers.

In subsection (m), the Commission changed “applicants” to “applicant’s” to correct a manifest error. The Commission inserted commas after the words “address” in subsection (a), “nonprofit” in subsection (e), and “names” in subsection (i) pursuant to 1 CMC § 3806(g).

§ 70-40.1-110 License Conditions

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The following conditions are placed on all license applications:

- (a) Fictitious names, doing business as (dba's), trade names and assumed names shall be respected and the Secretary shall not issue a business license in the same business name to any two persons or, with regard to corporate name reserved with the Registrar of Corporations pursuant to 4 CMC § 4322, to a person who is not the owner of the reserved corporate name.
- (b) One business license shall be issued to each distinct business activity. The Standard Industrial Classification Manual established by the Executive Office of the President of the United States of America, Office of the Management and Budget shall be used as a guideline.
- (c) Where appropriate the required documentation may include:
 - (1) The authority for a person to transact business must be obtained from the appropriate government agency or agencies such as the municipal council, Casino Gaming Commission; Secretary of Finance with respect to lotteries, the Director of Banking; or the Insurance Commissioner, as applicable. A foreign corporation or partnership authorized to transact business within the Commonwealth shall also present a copy of a current certificate of authority issued by the Registrar of Corporations pursuant to 4 CMC §§ 4641, et seq.
 - (2) A copy of the certificate of incorporation or registration.
 - (3) A certificate of clearance indicating that the applicant is in good standing with the Workers Compensation Commissioner, and where applicable, clearance from any other government agency.

Modified, 1 CMC § 3806(f).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

§ 70-40.1-115 Renewal

- (a) A licensee shall apply to renew its business license prior to its expiration by filing a business license application and paying a deposit equal to the business license fee within thirty days prior to the expiration of the current business license.
- (b) A business license may be suspended or revoked if the applicant is found to be not in compliance with any CNMI tax laws, and/or found to be in violation of any other CNMI laws or agency regulations. The process in denying or revoking an existing business license shall be in accordance with the Administrative Procedure Act [1 CMC §§ 9101, et seq.].
- (c) A business license that was not renewed for any business on or before the expiration date shall be considered a non-renewal and the licensee shall have no further right to operate that business without first submitting a new application for a business license.

Modified, 1 CMC § 3806(e), (f), (g).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

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

§ 70-40.1-120 Business License Not Transferable

A business license once issued is not transferable, however a business license for garment manufacturing may be transferred provided that the requirements imposed under 4 CMC § 5611(c), as amended by PL 14-82 are met.

History: Adopted 27 Com. Reg. 25399 (Dec. 30, 2005); Emergency and Proposed 27 Com. Reg. 25011 (Oct. 24, 2005) (effective for 120 days from Oct. 17, 2005); Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Commission Comment: For Transfer of Garment Manufacturing Business Licenses Regulations (Implementing Public Law 14-82), see NMIAC subchapter 80-30.2.

§ 70-40.1-125 Amendment to Business License Application

A licensee must amend the information provided in its business license application to reflect any changes including but not limited to the following:

- (a) Any change(s) in the ownership of a corporation, partnership, non-profit organization, individual, or association; and
- (b) Any change(s) in the lines of business; and
- (c) All such changes made to information provided on the original application must be reported to the Business License Office within 10 working days of such change(s).
- (d) Failure to report any change(s) above to the Business License Office may be grounds for revocation of a business license.

Modified, 1 CMC § 3806(f).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

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

§ 70-40.1-130 Display of Business License

- (a) The licensee shall display its current business license in a conspicuous place at the licensee’s principal place of business. Copies of the business license shall be displayed at all other locations from which the licensee conducts business.

(b) Every business licensed to do business in the Commonwealth shall only do business under the name duly licensed and shall display and/or advertise its business name in romanized lettering in addition to any other lettering.

Modified, 1 CMC § 3806(f).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

§ 70-40.1-135 Enforcement

(a) The Secretary may delegate his authority under the regulations in this subchapter to any employee for the purposes of enforcing any and all of these regulations including but not limited to the following:

- (1) To inquire and review current business license;
- (2) To impose a penalty, subject to the Administrative Procedure Act [1 CMC §§ 9101, et seq.], on those found to be operating a business without the required business license;
- (3) To issue notices to comply with the Business Licensing and Processing Act.

(b) The enforcement of all business license activities under jurisdiction of the Secretary of Finance shall be carried out by the Director of Revenue and Taxation or his designee.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Commission Comment: In subsection (a)(2), the Commission changed “Procedures” to “Procedure” to correct a manifest error.

§ 70-40.1-140 Authority to Request for Supporting Documents

The Secretary or any designee may from time to time request the applicant or licensee for/of a business license to provide documents to substantiate representations made in the application for the business license.

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

§ 70-40.1-145 Amendment Fee

There is hereby imposed a fee of twenty dollars for any amendments to the information provided in the business license application form which would require a re-issuance of a business license including but not limited to the following; change of name, change of location.

Modified, 1 CMC § 3806(e).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Part 200 - Examples

§ 70-40.1-201 Example 1; Distinct Business Activity

(a) A businessman, Mr. Doe operates a grocery store in village A and another grocery store in village B. Since the grocery stores are considered the same line of business activity, Mr. Doe is required to apply for only one business license to cover both grocery stores.

(b) Assume the same as in example (a) but Mr. Doe also has a service station business in village B. In this case, Mr. Doe will need to apply for two business licenses; one for the two grocery stores, and one for the service station.

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Commission Comment: The Commission corrected the phrase “stores is” in subsection (a) to “stores are” pursuant to 1 CMC § 3806(g).

§ 70-40.1-205 Example 2; Renewal of Business License

(a) Mr. Doe’s business licenses were issued on May 31, 1998. His renewal date is between May 1 to May 30, 1999. Mr. Doe submitted his business license applications to renew his licenses on April 25, 1999, and has satisfied all business license requirements. Mr. Doe may continue operating his businesses after May 30, 1999 for a period of one year unless his business license renewal applications is denied.

(b) Assume the same as in example (a), but Mr. Doe did not submit the business license application forms for his businesses before May 31 and is continuing to operate his businesses. Since his business licenses lapsed and no business license renewal applications were submitted before the expiration of the last valid business licenses, Mr. Doe is considered not to have a valid business license. Thus, Mr. Doe will be subject to the penalty for operating his businesses without a valid business license if he continued business operation after May 30, 1999.

Modified, 1 CMC § 3806(f).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

§ 70-40.1-210 Example 3; Penalty for Operating a Business Without a Business License

(a) Assume the penalty in example 2(b) [§ 70-40.1-205(b)] has been imposed. Since Mr. Doe operates two separate lines of business, he will be assessed a \$500 penalty for each line of business operated without a license. A \$100 penalty per day will be added for each line of business operated from the date the notice was given to Mr. Doe, if it is found that Mr. Doe continued operating the business without a valid license after notice was given to him.

(b) Assume the same as in example 3(a), subsection (a), however, Mr. Doe was found to be operating his business for 3 consecutive days after he was given notice of operating a business without a business license and has not submitted an application for a business license. Mr. Doe's total penalty to be assessed is \$1,600; \$500 for each line of business on the initial violation and \$300 for each line of business for the 3 days of continuous operation (after notice was given) without a valid business license.

Modified, 1 CMC § 3806(f), (g).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Commission Comment: In subsection (a), the Commission changed "it's" to "it is" to correct a manifest error. In subsection (b), the Commission corrected the spelling of "continuous."

§ 70-40.1-215 Example 4

Mr. Doe wants to operate a food stand to sell sandwiches and drinks along a roadside. An application for business license along with all other required business license documents must be submitted. In addition, an application fee deposit of \$50 must be paid in order for the applicant to be considered for the issuance of a business license.

Modified, 1 CMC § 3806(g).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Commission Comment: The Commission deleted the repeated word "be."

§ 70-40.1-220 Example 5

Assume the same as in example 4 [§ 70-40.1-215], except that Mr. Doe will only be selling local agricultural and fishery products. The application fee deposit required is \$5 instead of \$50 since Mr. Doe will only be selling local agricultural and fishery products.

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

§ 70-40.1-225 Example 6; Special Licenses

(a) Mrs. Bar has applied for and was issued a business license to operate a night club. Since the operation of a night club normally include the sale of alcoholic beverages, Mrs. Bar would be required to obtain a special license (ABC license) to sell alcoholic beverages in addition to the business license issued by the Department of Finance.

(b) Mr. Bank is interested in applying for a business license to operate a banking business. Before the Department of Finance can issue a business license, Mr. Bank must first obtain a banking license issued by the Banking Commissioner. After the banking license has been issued, the Department of Finance may issue a business license to Mr. Bank.

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).

Part 300 - Miscellaneous Provisions

§ 70-40.1-301 Severability

If any provision of the regulations in this subchapter shall be held invalid by a court of competent jurisdiction, the validity of the remainder of the regulations shall not be affected thereby.

Modified, 1 CMC § 3806(d), (f).

History: Adopted 21 Com. Reg. 16970 (Oct. 15, 1999); Proposed 21 Com. Reg. 16888 (Aug. 23, 1999).