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**CHAPTER 32
HAZARDOUS SUBSTANCES**

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§ 32101. Definitions.

As used in this Chapter:

(a) *Commerce* means any and all commerce within the territory of Guam and subject to the jurisdiction thereof and includes the operation of any business or service establishment;

(b) *Hazardous substance* means

(1)(A) any substance or mixture of substances which is (i) toxic, (ii) corrosive, (iii) an irritant, (iv) a strong sensitizer, (v) flammable or combustible, or (vi) which generates pressure through decomposition, heat or other means, if such substance or mixture of substances may cause substantial personal injury or

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substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children;

(B) any substance which the Director, by regulation finds, pursuant to the provisions of § 32102(a), meets the requirements of Subparagraph (1)(A) of this Paragraph;

(C) any radioactive substance, if, with respect of such substance as used in a particular class of article or as packaged, the Director determines, by regulation, that the substance is sufficiently hazardous to require labeling in accordance with this Chapter in order to protect the public health; or

(D) any toy or other article intended for use by children which the Director, by regulation, determines, in accordance with § 32102(e) of this Chapter, presents an electrical, mechanical or thermal hazard.

(2) The term hazardous substance shall not apply to economic poisons subject to the Federal or Guam Insecticide, Fungicide and Rodenticide Act, nor to foods, drugs and cosmetics, subject to Chapter 31 of this Part, nor to substances intended for use as fuels when stored in containers and used in the heating, cooking or refrigeration system of a house, but such term shall apply to any article which is not itself an economic poison within the meaning of the Federal Insecticide, Fungicide and Rodenticide Act or the Guam Insecticide, Fungicide and Rodenticide Act, but which is a hazardous substance within the meaning of Subparagraph (1) of this Paragraph by reason of bearing or containing such an economic poison;

(3) Hazardous substance shall not include any source material, special nuclear material or by product material as defined in the Atomic Energy Act of 1954, as amended, and regulations issued pursuant thereto by the Nuclear Regulatory Agency;

(4) Hazardous substance shall mean any toxic or hazardous substance as defined by:

(A) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration Act (OSHA) and any amendments thereto;

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(B) Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH) and any amendments thereto;

(C) Title III, also known as the 'Emergency Planning and Community Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also known as the 'Superfund Amendments and Reauthorization Act of 1986', and any amendments thereto;

(D) Waste, or combination of wastes, which because of its quantity, concentration or physical, chemical, or infectious characteristics may either:

(1) Cause, or significantly contribute to an increase in mortality or an increase in serious irreversible illness;

(2) Pose a substantial or potential hazard to human health or environment when improperly treated, stored, transported, disposed of or otherwise mismanaged.;

(E) Asbestos, chlorine gas and Polychlorinated biphenyls (PCBs).

(c) *Toxic* applies to any substance (other than a radioactive substance) which has the capacity to produce personal injury or illness to man through ingestion, inhalation or absorption through any body surface;

(d)(1) *Highly toxic* means any substance which falls within any of the following categories:

(A) produces death within fourteen (14) days in half or more than half of a group of ten (10) or more laboratory white rats each weighing between two hundred (200) and three hundred (300) grams, at a single dose of fifty (50) milligrams or less per kilogram of body weight, when orally administered;

(B) produces death within fourteen (14) days in half or more than half of a group of ten (10) or more laboratory white rats each weighing between two hundred (200) or three hundred (300) grams, when inhaled continuously for a period of one (1) hour or less at an atmosphere concentration of two hundred (200) parts per million by volume or less of

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gas or vapor to two (2) milligrams per liter by volume or less of mist or dust, provided such concentration is likely to be encountered by man when the substance is used in any reasonably foreseeable manner; or

(C) produces death within fourteen (14) days in half or more than half of a group of ten (10) or more rabbits tested in a dosage of two hundred (200) milligrams or less per kilogram of body weight, when administered by continuous contact with the bare skin for twenty-four (24) hours or less.

(2) If the Director finds that available data on human experience with any substance indicate results different from those obtained on animals in the above-named dosages or concentrations, the human data shall take precedence;

(e) *Corrosive* means any substance which in contact with living tissue will cause destruction of tissue by chemical action; but shall not refer to action on inanimate surfaces;

(f) *Irritant* means any substance not corrosive within the meaning of Subparagraph (e) which on immediate, prolonged or repeated contact with normal living tissue will induce a local inflammatory reaction;

(g) *Strong sensitizer* means a substance which will cause on normal living tissue, through an allergic or photodynamic process, a hypersensitivity which becomes evident on reapplication of the same substance and which is designated as such by the Director. Before designating any substance as a strong sensitizer, the Director, upon consideration of the frequency of occurrence and severity of the reaction, shall find that the substance has significant potential for causing hypersensitivity;

(h) *Extremely flammable* shall apply to any substance which has a flash point of above twenty degrees (20°) Fahrenheit as determined by the Tagliabue Open Cup Tester, and the term "flammable" shall apply to any substance which has a flash point of above twenty degrees (20°) to and including eighty degrees (80°) Fahrenheit, as determined by the Tagliabue Open Cup Tester, and the term "combustible" shall apply to any substance which has a flash point above eighty degrees (80°) Fahrenheit to and including one hundred fifty degrees (150°), as determined by the Tagliabue Open Cup Tester; except that the

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flammability or combustibility of solids and of the contents of self-pressurized containers shall be determined by methods found by the Director to be generally applicable to such materials or containers, respectively and established by regulations issued by him, which regulations shall also define the terms “flammable,” “combustible” and “extremely flammable” in accord with such methods;

(i) *Radioactive substance* means a substance which emits ionizing radiation;

(j) *Label* means a display of written, printed or graphic matter upon the immediate container of any substance, or in the case of an article which is unpackaged in an immediate container intended or suitable for delivery to the ultimate consumer, a display of such matter directly upon the article involved or upon a tag or other suitable material affixed thereto, and a requirement made by or under authority of this Chapter that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears (1) on the outside container or wrapper, if any there be, unless it is easily legible through the outside container or wrapper, and (2) on all accompanying literature where there are directions for use, written or otherwise;

(k) *Misbranded hazardous substance* means a hazardous substance (including a toy or other article intended for use by children, which is a hazardous substance or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted) intended or packaged in a form suitable for use in the household or by children, which substance, except as otherwise provided by or pursuant to § 32102, fails to bear a label:

(1) which states conspicuously:

(A) the name and place of business the manufacturer, packer, distributor or seller;

(B) the common or usual name or the chemical name (if there be no common or usual name) of the hazardous substance or of each component which contributes substantially to its hazard, unless the Director, by regulation, permits or requires the use of a recognized generic name;

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(C) the signal work DANGER on substances which are extremely flammable, corrosive or highly toxic;

(D) the signal word WARNING or CAUTION on all other hazardous substances;

(E) an affirmative statement of the principal hazard or hazards, such as Flammable, Combustible, Vapor Harmful, Causes Burns, Absorbed Through Skin or similar wording descriptive of the hazard;

(F) precautionary measures describing the action to be followed or avoided, except when modified, by regulation, of the Director pursuant to § 32102;

(G) instruction, when necessary or appropriate, for first-aid treatment;

(H) the word poison for any hazardous substance which is defined as highly toxic by Subsection (G);

(I) instructions for handling and storage of packages which require special care in handling or storage; and

(J) the statement (i) "Keep out of the reach of children" or its practical equivalent; or (ii) if the article is intended for use by children and is not a banned hazardous substance, adequate directions for the protection of children from the hazard; and

(2) on which any statement required under Subparagraph (1) of this Paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout or color with other printed matter on the label;

(l)(1) *Banned hazardous substance* means:

(A) any toy or other article intended for use by children, which is a hazardous substance or which bears or contains a hazardous substance in such manner as to be susceptible of access by a child to whom such toy or other article is entrusted; or

(B) any hazardous substance intended or packaged in a form suitable for use in household, which the Director by regulation classifies as a banned hazardous

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substance on the basis of a finding that, notwithstanding such cautionary labeling as is or may be required under this Chapter for the substance, the degree or nature of the hazard involved in the presence or use of such substance in households is such that the objective of the protection of the public health and safety can be adequately served only by keeping such substance, when so intended or packaged, out of the channels of commerce; provided, that the Director, by regulation:

(i) shall exempt from clause (A) of this Paragraph articles such as chemical sets, which by reason of their functional purpose require the inclusion of the hazardous substance involved or necessarily present an electrical, mechanical or thermal hazard, and which bear labeling giving adequate directions and warnings for safe use and are intended for use by children who have attained sufficient maturity, and may reasonably be expected to read and heed such directions and warnings; and

(ii) shall exempt from clause (a), and provide for the labeling of common fireworks (including toy paper caps, cone fountains, cylinder fountains, whistles without report and sparklers) to the extent that he determines that such articles can be adequately labeled to protect the purchasers and users thereof;

(2) Proceedings for the issuance, amendment or repeal of regulations pursuant to clause (B) of Subparagraph (1) of this Paragraph shall be governed by the provision of § 32102 of this Chapter.

(m) An article may be determined to present an electrical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture may cause personal injury or illness by electrical shock;

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(n) An article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk or personal injury or illness (1) from fracture, fragmentation or disassembly of the article; (2) from propulsion of the article (or any part or accessory thereof); (3) from points or other protrusions, surfaces, edges, openings or closures; (4) from moving parts; (5) from lack or insufficiency of controls to reduce or stop motion; (6) as a result of self-adhering characteristics of the article; (7) because of the article (or any part of accessory thereof) may be aspirated or ingested; (8) because of instability; or (9) because of any other aspect of the article's design or manufacture; and

(o) An article may be determined to present a thermal hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness because of heat as from heated parts, substances or surfaces.

(p) *Agency* shall mean the government of Guam or any department, agency, autonomous agency, authority, branch or instrumentality thereof.

(q) *Commission* shall mean the Worker's Compensation Commission of the Department of Labor.

(r) *B Reader* shall mean a radiologist or pulmonologist who has received specialized training in the interpretation of chest x-rays specifically relating to occupational lung diseases and who has passed a proficiency test administered by the Centers for Disease Control, National Institute for Occupational Safety and Health (NIOSH).

(s) *Person* shall mean any human being, and not any corporation, partnership or business entity.

(t) *Employee* shall mean a person as defined in subsection (i) of § 37002 of the Government Code of Guam.

(u) *Exposure* shall mean a person's subjection to a hazardous substance defined by subsection (b)(4) of this section where the level of same is above and beyond the acceptable limits as defined by:

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(1) 29 CFR 1910, Subpart Z, Toxic and Hazardous Substances, Occupational Safety and Health Administration Act, and any amendments thereto;

(2) Threshold Limit Value for Chemical Substances and Physical Agents in the Work Environment, American Conference of Governmental Industrial Hygienists (ACGIH) and any amendments thereto;

(3) Title III, also known as the 'Emergency Planning and Community, Right-To-Know Act of 1986' as contained in U.S. Public Law 99-499, also known as the 'Superfund Amendments and Reauthorization Act of 1986', and any amendments thereto.

(v) *Injury* shall mean physical impairment or death arising out of exposure to hazardous substances defined by subsection (b)(4) of this section, and such disease, medical impairment or infection as a result of such exposure.

(w) *Disability* shall mean incapacity because of injury as defined by subsection (v) of this section which prevents a person from earning a living wage or other employment.

(x) *Negligence* shall mean the failure to exercise the care that a prudent person or entity should exercise.

(y) *Average annual wages* shall mean:

(1) If employed at the time of exposure: The total wages paid to the person for the year immediately preceding the date of exposure.

(2) If unemployed twelve (12) months or less, or, if a person's total annual earnings, as computed in (1) above, are less than two thousand eighty (2,080) hours times the existing minimum wage rate of Guam: Such sum as shall reasonably represent the annual earning capacity of the person, having regard to the previous earnings of the exposed person in the occupation in which he or she was working at the time of exposure, and of other persons of the same or similar class working in the same neighboring locality or other employment of such person, including the reasonable value of the services of the employer if engaged in self-employment.

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(3) Having never been employed, or, if unemployed thirteen (13) months or more at the time of exposure: An amount equal to one percent (1%) of the existing minimum wage rate of Guam, utilizing a twenty (20) hour a week basis for calculation.

(z) *Whole life factor* shall mean the whole value of a person based on his or her age as determined by the American Experience Mortality Table used by the Commission."

SOURCE: GC § 9620; subitem (4) to subsection (b) added by P.L. 20-110:2; subsections (p) through (z) added by P.L. 20-110:3.

§ 32102. Regulations Declaring Hazardous Substances; Variations and Exemptions; Judicial Review of Determinations.

(a) Whenever in the judgment of the Director such action will promote the objectives of this Chapter by avoiding or resolving uncertainty as to its application, the Director may, by regulation, declare to be a hazardous substance for the purpose of this Chapter, any substance or mixture of substances which he finds meets the requirements of Subparagraph (1)(A) of § 32101(b).

(b) If the Director finds that the requirements of § 32101(l)(1) are not adequate for the protection of the public health and safety in view of the special hazard presented by any particular hazardous substance, he may, by regulation, establish such reasonable variations or additional label requirements as he finds necessary for the protection of the public health and safety; and any such hazardous substance intended or packaged in a form suitable for use in the household or by children which fails to bear a label in accordance with such regulations shall be deemed to be a misbranded hazardous substance.

(c) If the Director finds that, because of the size of the package involved or because of the minor hazard presented by the substance contained therein or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this Chapter is impracticable or is not necessary for the adequate protection of the public health and safety, the Director shall promulgate regulations exempting such substance from these requirements to the extent he determines to be consistent with adequate protection of the public health and safety.

(d) If the Director finds that the hazard of an article subject to this Chapter is such that labeling, adequate to protect the public health and safety cannot be devised, or the article an imminent danger to the public

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health and safety, the Director may declare such article to be a banned hazardous substance and require its removal from commerce.

(e)(1) A determination by the Director that a toy or other article intended for use by children presents an electrical, mechanical or thermal hazard shall be made by regulation in accordance with this Chapter.

(2) If, before or during a proceeding pursuant to Paragraph (1) of this Subsection, the Director finds that, because of an electrical, mechanical or thermal hazard, distribution of the toy or other article involved presents an imminent hazard to the public health and he gives notice of such findings, such toy or other article shall be deemed to be a banned hazardous substance for purposes of this Chapter until the proceeding has been completed. If not yet initiated when such notice is given, such a proceeding shall be initiated as promptly as possible.

(3)(A) In the case of any toy or other article intended for use by children which is determined by the Director to present an electrical, mechanical or thermal hazard, any person who will be adversely affected by such a determination may, at any time prior to the sixtieth (60th) day after the regulation making such determination is issued by the Director, file a petition with the court of competent jurisdiction for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Director or other officer designated by him for that purpose. The Director shall file in the court the record of the proceedings on which the Director based his determination;

(B) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there was no opportunity to adduce such evidence in the proceeding before the Director, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Director in a hearing or in such other manner, and upon such terms and conditions as to the court may seem proper. The Director may modify his findings as to be the facts or make new findings by reason of the additional evidence so taken and he shall file such modified or new findings and his recommendation, if any, for the

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modification or setting aside or his original determination, with the return of such additional evidence;

(C) Upon the filing of the petition under this Paragraph, the court shall have jurisdiction to review the determination of the Director. If the court ordered additional evidence to be taken under Subparagraph (B) of this Paragraph, the court shall also review the Director's determination to determine if, on the basis of the entire record before the court pursuant to Subparagraphs (A) and (B) of this Paragraph, it is supported by substantial evidence. If the court finds the determination is not so supported, the court may set it aside. With respect to any determination reviewed under this Paragraph, the court may grant appropriate relief pending conclusion of the review proceedings.

SOURCE: GC § 9620.1.

§ 32103. Prohibited Acts.

(a) The following acts and the causing thereof are prohibited:

(1) The manufacture, production, preparation, compounding, packing, selling, offering for sale or keeping for sale within the territory of Guam, or the introduction into this Territory from any other state, territory or the District of Columbia or from any foreign country, of any package of a misbranded hazardous substance or banned hazardous substance;

(2) The alteration, mutilation, destruction, obliteration or removal of the whole or any part of the label of, or the doing of any other act with respect to a hazardous substance if such act is done which the substance is in commerce or while the substance is held for sale whether or not the first sale after shipment in commerce and results in the hazardous substance being a misbranded hazardous substance or a banned hazardous substance;

(3) The receipt in commerce of any misbranded hazardous substance or banned hazardous substance and the delivery or preferred delivery for pay or otherwise;

(4) The giving of a guarantee or undertaking referred to in § 32104(c)(2) which guarantee or undertaking is false except by person who relied upon a guarantee or understanding to the same effect signed by, and containing the name and address of, the person residing in the

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United States from whom he received in good faith the hazardous substance;

(5) The failure to permit entry or inspection as authorized by § 32110(a) or to permit access to and copying of any record as authorized by § 644;

(6) The introduction or delivery for introduction into commerce, or the receipt in commerce and subsequent delivery or preferred delivery for pay or otherwise, of a hazardous substance in a reused food, drug or cosmetic container or in a container which, though not a reused container, is identifiable as a food, drug or cosmetic container by its labeling or by other identification. The reuse of a food, drug or act which results in the hazardous substance being a misbranded hazardous substance. As used in this Paragraph, the terms "food," "drug" and "cosmetic," shall have the same meanings as in Chapter 40; and

(7) The use by any person to his own advantage or revealing other than to the Director or officers or employees of the agency or to the courts when relevant in any judicial proceeding under this Chapter, of any information acquired under authority of § 32109 concerning any method of process which as a trade secret is entitled to protection.

(b) Any person who imports or receives from any other state or territory or the District of Columbia or from any foreign country or who having so received delivers for pay or otherwise or offers to deliver to any other person, any misbranded hazardous substance or any person who shall manufacture or produce, prepare or compound or pack or sell, or offer for sale or keep for sale in the territory of Guam any such misbranded hazardous substance, shall be guilty of a misdemeanor punishable as provided in § 32103.

SOURCE: GC § 9620.2.

§ 32104. Penalties.

(a) Any person who violates any of the provisions of § 32103(a) shall be guilty of a misdemeanor; but for offenses committed with intent to defraud or mislead, or for second and subsequent offenses, the person shall be guilty of a third degree felony.

(b) No person shall be subject to the penalties of Subsection (a) of this Section, (1) for having violated § 32103(a)(3), if the receipt, delivery or

preferred delivery of the hazardous substance was made in good faith, unless he refuses to furnish on request of an officer or employee duly designated by the Director, the name and address of the person from whom he purchased or received such hazardous substance and copies of all documents, if any there be, pertaining to the delivery of the hazardous substance to him; or (2) for having violated § 32103(a)(1), if he establishes a guarantee or undertaking signed by and containing the name and address of the person residing in the United States from whom received in good faith the hazardous substance to the effect that the hazardous substance is not a misbranded hazardous or a banned hazardous substance with the meaning of those terms in the Chapter.

SOURCE: GC § 9620.3.

§ 32105. Injunction Proceedings.

The Director may apply to the Superior Court for, and such Court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of § 32103(a), irrespective of whether or not there exists an adequate remedy at law.

SOURCE: GC § 9620.4.

§ 32106. Embargo and Seizure.

(a) Whenever the Director finds or has probable cause to believe that any hazardous household substance is misbranded or is a banned hazardous substance, he shall affix to such article a tag or other appropriate marking giving notice that such article is or is suspected of being misbranded or is a banned hazardous substance and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by him or the Court. No person shall remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under Subsection (a) has been found to be misbranded or a banned hazardous substance, the Director shall petition the Court to condemn such article. When the Director has found that an article so detained or embargoed is not misbranded or a banned hazardous substance, he shall remove the tag or other marking.

(c) If the Court finds that a detained or embargoed article is misbranded or a banned hazardous substance, such article shall be destroyed at the expense of the owner, under supervision of the Director, and all Court

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costs and fees and storage and other proper expenses shall be taxed against the owner; provided, that when the misbranding can be corrected by proper labeling of the article, the Court, conditioned that such article shall be so labeled, may direct that such article be delivered to the owner for such labeling under the supervision of the Director. The expense of such supervision shall be paid by the owner. The article shall be returned to the owner on the representation to the Court by the Director that the article is no longer in violation of this Chapter and that the expenses of such supervision have been paid.

SOURCE: GC § 9620.5.

§ 32107. Hearing Before Report of Criminal Violation.

The Attorney General shall, upon referral by the Director, prosecute a violation of this Chapter. Before any violation of this Chapter is reported to the Territorial Prosecutor, the alleged offender shall be given appropriate notice and a hearing before the Director, either orally or in writing, or by an attorney, with regard to such violation.

SOURCE: GC § 9620.6.

§ 32108. Regulations.

(a) The Director shall adopt and promulgate regulations under this Chapter in conformance with the regulations established pursuant to the Federal Hazardous Substances Act. Such regulations adopted and promulgated by the Director shall not conflict with those regulations adopted and promulgated by the Guam Environmental Protection Agency pursuant to P.L. 14-37 (Solid Waste Management and Litter Control Act) or to the Federal Resource Conservation and Recovery Act (P.L. 94-580).

(b) To the extent that the requirements of this Part are identical with the Federal act regulations of the Federal government which are in effect on the effective date of these sections or which are adopted on or after such date are the hazardous substances regulations of this Territory.

(c) A Federal regulation adopted pursuant to this Chapter takes effect in this Territory thirty (30) days after it becomes effective as a Federal regulation. Any person who will be adversely affected by adoption of such regulation in this Territory may, within the thirty (30) days prior to its becoming effective in this Territory, file with the Department in writing objections and a request for a hearing. The timely filing of objections to a regulation which has become effective under the Federal act, stays the adoption of the regulation in this Territory.

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(d) If objections are made to a proposed regulation, the Department, after notice, shall conduct a public hearing to receive evidence on issues raised by the objections. Any interested person or his representative shall be heard. The Department shall act upon objections by order and shall mail the order to objectors by certified mail as soon after the hearing, if practicable. The order shall be based on evidence contained in the record of the hearing. If the order concerns a Federal regulation, the Department may adopt, rescind or modify it. If the order concerns a proposed regulation, the Department may withdraw it or set an effective date for the regulation as published or as modified by the order. The effective date shall be at least sixty (60) days after publication of the order.

SOURCE: GC § 9620.7.

§ 32109. Examinations and Investigations.

(a) For the purpose of this Chapter, officers or employees duly designated by the Director, upon presenting appropriate credentials to the owner, operator or agent in charge, are authorized (1) to enter, at reasonable times, any factory, warehouse or establishment in which hazardous substances are manufactured, processed, packed or held for introduction into commerce or are held after such introduction, or to enter any vehicle being used to transport or hold such hazardous substances in commerce; (2) to inspect, at reasonable times, and within reasonable limits and in a reasonable manner, such factory, warehouse, establishment or vehicle, and all pertinent equipment, finished and unfinished materials, and labeling therein; and (3) to obtain samples of such materials or packages thereof, or of such labeling.

(b) If the officer or employee obtains sample, prior to leaving the premises, he shall pay or offer to pay the owner, operator or agent in charge for such sample and given receipt describing the samples obtained.

SOURCE: GC § 9620.8.

§ 32110. Records of Shipment.

For the purpose of enforcing the provisions of this Chapter carriers engaged in commerce, and persons receiving hazardous substances in commerce or holding such hazardous substance so received shall, upon the request of the Director, permit such officer or employee, at reasonable times, to have access to and to copy all records showing the movement in commerce of any such hazardous substances, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof;

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and it shall be unlawful for any such carrier or person to fail to permit such access to and copying of any record so requested when such request is accompanied by a statement in writing specifying the nature or kind of such hazardous substance to which such request relates; provided, that evidence obtained under this Section shall not be used in a criminal prosecution of the person from whom obtained; provided further, that carriers shall not be subject to the other provisions of this Chapter by reason of their receipt, carriage, holding or delivery of hazardous substances in the usual course of business as carriers.

SOURCE: GC § 9620.9.

§ 32111. Publicity.

(a) The Director may publish from time to time reports summarizing any judgments, decrees or court orders which have been rendered under this Chapter.

(b) The Director may disseminate information regarding hazardous substances in situations involving, in the opinion of the Director, imminent danger to health. Nothing in this Section shall be construed to prohibit the Director from collecting, reporting and illustrating the results of the investigations of the agency.

SOURCE: GC § 9620.10.

§ 32112. Hazardous Substance Testing Offered.

(a) The Department shall provide testing to any person who requests such tests for hazardous substances defined by Section 32101(b)(4) of this Chapter. The fee for such testing shall be set by the Department pursuant to the provisions of the Administrative Adjudication Law.

(b) The Department is authorized to procure or contract for the services of a certified B Reader to conduct and interpret asbestos x-ray tests and such other professional services for the testing of exposure to hazardous substances defined by said Section 32101(b)(4).

(c) Every affected agency shall incorporate in the job specifications of its employees the types of testing available at the Department for hazardous substances defined by said Section 32101(b)(4). Failure to make such statement shall be deemed a citeable violation under Chapter 87 of this Title.

SOURCE: Added by P.L. 20-110:4.

§ 32113. Government of Guam to Procure Hazardous Substance Liability Insurance Coverage.

The government of Guam shall procure liability insurance coverage for hazardous substances defined by Section 32101(b)(4) of this Chapter to insure itself against claims for injury, disability and death arising under the provisions of this Chapter. The Governor shall request from the Legislature any appropriation to comply with this Section on an annual basis.

SOURCE: Added by P.L. 20-110:4

§ 32114. Awards for Exposure Where no Injury, Disability or Death is Apparent.

(a) On a finding by the Commission that the government of Guam or any of its employees, officers or agents was negligent in the handling, storage, management, generation, disposal or transportation of hazardous substances defined by Section 32101(b)(4) of this Chapter, and exposure to said hazardous substances has occurred but no injury, disability or death is immediately medically apparent, the Commission shall award compensation to the exposed person in the amount equal to one percent (1%) of the exposed person's future earnings as computed using his or her whole life factor and average annual earnings as defined in this Chapter.

(b) Such compensation shall be paid in one lump sum commuted in compliance with the provisions of subsection (j) of § 37014 of the Government Code of Guam.

(c) The maximum compensation provisions of subsection (m) of § 37014 of the Government Code shall not apply to the compensation paid pursuant to this Chapter; provided, however, that in the event that such exposure eventually leads to injury disability or death, the Worker's Compensation Law shall preempt this Chapter, and any compensation payable under such law shall be offset by such amounts heretofore paid to the exposed person.

(d) In the event of exposure where no injury, disability or death is immediately medically apparent, or, in the event of injury, disability or death resulting from exposure to hazardous substances defined by Section 32101(b)(4) of this Chapter, the burden of proof shall be on the government of Guam to prove it was not negligent. In the absence of such a showing by the government of Guam, the Commission shall come to a finding of negligence and compensation shall be paid as provided herein. Notwithstanding the provisions of this subsection, any person who accepts

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such compensation shall not be permitted to file additional claims against the government of Guam for the same exposure, until such time as injury, disability or death, as opposed to exposure, is apparent.

SOURCE: Added by P.L. 20-110:4

§ 32115. Report of Exposure.

Within thirty (30) days of exposure, a person must report such exposure to the Commission in order to be eligible for compensation under this Chapter.

SOURCE: Added by P.L. 20-110:4.

§ 32116. Eligibility Under Worker's Compensation Commission.

Nothing within this Chapter shall be construed to qualify any person for benefits under the Worker's Compensation Law.

SOURCE: Added by P.L. 20-110:4

§ 32117. Hazardous Substance Expense Fund.

[Repealed]

SOURCE: Added by P.L. 20-110:4.

NOTE: P.L. 23-128:IV:19 repeals the Hazardous Substance Fund and provides for "... any and all remaining balances are reverted to the General Fund. All revenue previously earmarked into this Fund shall continue to be collected and credited to the General Fund."

§ 32118. Severability.

If any of the provisions of this Chapter, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect any other provisions or application of this Chapter which can be given effect without the invalid provision or application, and to this end the provisions of this Chapter are severable.

SOURCE: Added by P.L. 20-110:4.

§ 32119. Report of Hazardous Substance Incidents.

Every agency shall report incidents of exposure to hazardous substances defined by Section 32101(b)(4) of this Chapter to the Department within ten (10) days. The Department shall compile and maintain statistics of injuries and deaths attributed to said hazardous substances. The statistics shall not reveal the identity of any person who has been injured or dies as a result of exposure to said hazardous substances.

SOURCE: Added by P.L. 20-110:4.

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§ 32120. Hazardous Pay.

Any government of Guam employee who, in the line and scope of his or her employment:

(a) Is required to enter a site where a suspected hazardous substance exposure, as defined by § 32101(b)(4) of this Chapter, has occurred, either to make inspection, investigation or assist in securing the area; or

(b) Is required to assist a person or person suspected to have been exposed to a hazardous substance defined by said § 32101(b)(4); or

(c) Is required to medically test a person or persons who is suspected to have been exposed to a hazardous substance defined by said § 32101(b)(4);

and it is determined that an exposure did in fact take place, regardless of whether the site is owned or operated by the government of Guam, shall not be eligible for compensation as provided in § 32114 of this Chapter. However, said employee is entitled to apply for, and shall receive, hazardous pay in the amount of ten percent (10%) of the employee's hourly wage rate for the time spent at the exposure site, or expended in the testing or examination of a person suspected to have been exposed when and if it is determined that an exposure did take place. Written notification that an exposure occurred shall be provided by the Department to the Division of Occupational Safety and Health, which shall then inform in writing the affected employee and the Chief Officer, Director or Administrator of the employee's agency. Nothing in this Section shall preclude said employee from applying to the Commission for compensation where medical injury, disability or death has been determined.

SOURCE: Added by P.L. 20-110:4.
