CHAPTER 87 OCCUPATIONAL SAFETY AND HEALTH CODE

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§ 87101. Definitions.

(a) *Standards* shall mean those safety and health standards, rules and regulations made applicable to the Government of Guam after enactment of

same into local law or temporarily promulgated, modified or waived, as provided by Section 87107 of this Chapter.

- (b) *Agency* shall mean the Government of Guam or any department, agency, autonomous agency, Authority, Branch or instrumentality thereof.
- (c) *Department* shall mean the Department of Labor within the Government of Guam.
 - (d) Director shall mean the Chief Officer of the Department.
- (e) *Division* shall mean the Division of Occupational Safety and Health within the Department of Labor.
 - (f) Administrator shall mean the Chief Officer of the Division.
 - (g) Safety Inspector shall mean an inspector of the Division.
- (h) *Safety Officer* shall mean an employee designated by the Administrator to be responsible for the safety program of an agency.
- (i) *Safety Review Board* shall mean the five-member Board which shall hear agency appeals from citations issued by the Division.
- (j) 30-day citation shall mean the written citation issued by the Administrator to an agency.
- (k) Standing citation shall mean the written citation issued by the Administrator to an agency after hearing and concurrence by the Safety Review Board.
- (l) Effective date shall mean ninety (90) days after this Chapter becomes law.

SOURCE: Added by P.L. 19-19:2. (Effective August 22, 1988)

§ 87102. Division of Inter-governmental Occupational Safety and Health Created.

There is within the Government of Guam the Division of Occupational Safety and Health which shall be administratively attached to the Department of Labor. Administratively attached shall mean that the Director will have overall authority over the Division's budget, and that concurrence of the Director must be obtained by the Administrator in hiring employees of the Division. The Director shall have no authority or jurisdiction and shall exercise no control over the Administrator or the Division with respect to Sections 87104, 87105, 87106, 87107, 87109, 87110, 87111, 87112,

87113, 87114, 87115, 87116, 87121, 87123, 87124 and 87127 of this Chapter.

SOURCE: Added by P.L. 19-19:2.

§ 87103. Administrator.

There shall be within the Division an Administrator who shall act as the Chief Officer and direct the operations of the Division. The Administrator shall be hired by the Director and shall be in the classified service as established by the Director of Administration. The Administrator shall receive a salary equal to that of the Director.

SOURCE: Added by P.L. 19-19:2. Effective January 1, 2006, reference to the "Civil Service Commission," amended to "Director of Administration" pursuant to P.L. 28-68:IV:45 (Sept. 30, 2005).

§ 87104. Duties of the Division.

The general duties of the Division shall be:

- (a) to continually review and modify safety standards and rules, and to recommend to the Legislature enactment of same;
- (b) to continually monitor and enforce enacted or temporarily promulgated safety and health standards within the Government of Guam; and
- (c) to continually assess employee safety, training and education programs on an agency basis.

SOURCE: Added by P.L. 19-19:2.

§ 87105. Safety Standards to be Recommended to the Legislature.

Within ninety (90) days from the effective date of this Chapter, the Division shall recommend to the Legislature enactment of specific safety and health standards for the Government of Guam. Such standards to be considered by the Division shall include, but not be limited to, standards deriving from U.S. Public Law 91-596. Thereafter, from time to time, the Division will continue to review standards and make recommendations to the Legislature for revision or expansion.

SOURCE: Added by P.L. 19-19:2.

§ 87106. Review of Safety Standards Prioritized.

In its consideration of standards to be recommended to the Legislature for enactment, the Division shall prioritize same. The first three priorities shall be:

- (a) toxic, chemical or hazardous substance storage and handling, including, but not limited to, the acquisition and use of protective gear and equipment;
 - (b) electrical and fire safety conditions; and
 - (c) employee education and training with respect to (a) and (b) above. **SOURCE:** Added by P.L. 19-19:2.

§ 87107. Temporary Waiver, Modification, Promulgation and Enforcement of Standards Authorized.

The Division is hereby authorized to temporarily waive or modify any locally-enacted standard or rule on an individual agency basis provided compliance of said standard, prior to waiver or modification, may, in the written opinion of both the Chief Officer of the affected agency and Administrator, prove beyond the financial means of said agency. The Division is hereby authorized to temporarily promulgate recognized standards and to enforce same on written order to the Administrator or the Safety Review Board, if, in the opinion of the Administrator or the Safety Review Board, an unsafe condition exists and is likely to cause injury in the affected agency. Enforcement of such modifications, waivers, or promulgations of safety standards or rules, shall not exceed one (1) year unless enacted into local law.

SOURCE: Added by P.L. 19-19:2.

§ 87108. Safety Inspectors and Other Employees.

In addition to clerical personnel hired by the Administrator with the concurrence of the Director and in accordance with the personnel and compensation laws, the Division shall be staffed by six (6) Safety Inspectors, each representing one of the following safety disciplines: heavy construction, light construction, industrial hygiene, hazardous substance control, electrical and fire engineering. In order to qualify as a Safety Inspector, a person must meet the qualifications established by the Director of Administration. Safety Inspectors shall be selected by the Administrator with the concurrence of the Director and will be classified employees of the Government of Guam to be established by the Director of Administration.

SOURCE: Added by P.L. 19-19:2. Amended by P.L. 28-068:IV:42 and 47 (Sept. 30, 2005), effective January 1, 2006; reference to Civil Service Commission changed to Director of Administration.

§ 87109. Annual Inspections and Report.

At least once a year, every agency shall be inspected by the Division. Such inspection shall include, but not be limited to, on-site inspection of every facility, discussion with employees, and assessment of any educational, training and safety programs, including, but not limited to, the administration of same. As each agency is inspected, the Administrator shall cause a report to be written by the Safety Inspector(s):

- (a) describing any safety and health violations;
- (b) citing any standards so violated;
- (c) indicating the hazard rating of each violation;
- (d) recommending specific corrective action; and
- (e) the date by which each cited violation must be corrected. This report shall be submitted to the Chief Officer of said agency for comment and action. A follow-up inspection shall take place after the corrective date deadline indicated in the Report, but in no event later than sixty (60) days from said date. The Safety Inspector(s) shall note any positive action taken, as well as the failure of the agency to correct other cited deficiencies. The Safety Inspector(s) shall then include these findings in a report to the Administrator, including, but not limited to, any recommendations to issue citations or give temporary relief to the agency through waiver or modification of specific standards.

SOURCE: Added by P.L. 19-19:2.

§ 87110. Other Inspections Authorized.

In addition to annual and follow-up inspections, the Division may

- (a) inspect any agency for safety violations upon the written request of any person, organization or group of persons; and
- (b) conduct 'spot' or 'no notice' inspections for any safety deficiencies without prior notice to the affected agency, at the Division's discretion. The identity of any person, organization or group of persons requesting an inspection of an agency of the Government of Guam or reporting an unsafe condition shall be confidential.

SOURCE: Added by P.L. 19-19:2.

§ 87111. Employee Hazard Reporting Program.

The following procedure is set forth for the submission of employee reports of unsafe or unhealthful conditions in the work place:

- (a) All Government of Guam employees shall be encouraged to orally report unsafe or unhealthful working conditions to their immediate supervisor who will promptly investigate the situation and take appropriate corrective actions, including, but not limited to, apprising the Safety Officer of the agency. The Safety Officer may contact the Division for assistance as necessary. The Safety Officers shall keep the reporting employee informed of all actions taken.
- (b) Any Government of Guam employee (or employee representative) may submit a written report of an unsafe or unhealthful working condition directly to the Division. A standard 'hazard report' form for this purpose shall be drafted by the Division and provided by the same to each agency. Such forms shall be placed by each agency in areas convenient to all work places. Employees' names shall remain anonymous and the form shall so indicate.
- (c) Upon receipt of a 'hazard report' form, a Safety Inspector will contact the originator, if identified, to acknowledge receipt and discuss the seriousness of the reported hazard. The Division shall advise the cognizant supervisor and Safety Officer that a hazard has been reported. Unsigned 'hazard report' forms may be investigated at the discretion of the Division.
- (d) The Division shall investigate all signed reports. Alleged imminent danger situations, including, but not limited to, the potential for death or severe injury and/or loss of facility or major property damage, shall be investigated within twenty-four (24) hours. Potentially serious situations shall be investigated within three (3) days. If the reported situation involves a health hazard, as opposed to a safety hazard, the Division will refer the report to the cognizant medical authority for investigation as necessary.
- (e) The Division shall provide an interim or complete response in writing to the originator of the report within fifteen (15) working days of receipt. Interim responses will include the expected date for a complete response. If the investigation validates the reported hazard, the complete response shall include a summary of the action taken for abatement. If no significant hazard is found to exist, the reply shall include the basis for that determination

(f) The complete response shall encourage, but not require, the originator to informally contact the Division if he or she desires additional information or is dissatisfied with the response.

SOURCE: Added by P.L. 19-19:2.

§ 87112. Government of Guam to Furnish Information.

Every agency shall at all times cooperate with the Division in the performance of its functions, and, upon request, furnish the Division all information that it may require respecting any of the matters concerning employee safety, health or working conditions, and shall permit the examination of its personnel, facilities, books, records, contracts, maps and other documents by the Division, or any person authorized by it in writing to make such examination.

SOURCE: Added by P.L. 19-19:2.

§ 87113. 30-Day Citation Issued.

The Administrator shall cause a 30-day citation to be issued to the Chief Officer of the affected agency when:

- (a) violation(s) have been identified in the annual inspection report and no substantial action to correct same has taken place by the deadline set by Safety Inspectors;
 - (b) on the written order of the Safety Review Board; or
- (c) on any inspection made by the Division a safety violation is found to exist that if not corrected immediately, poses a serious threat to employee health or safety. This shall include, but not be limited to, 'spot' or 'no notice' inspections authorized by Section 87110 of this Chapter. Notice of a 30-Day Citation shall be provided by the Chief Officer of the agency, the agency's Safety Officer, and posted at each affected work site in a place(s) where it can be easily read by employees. The 30-Day Citation shall include the following information:
 - (1) a description of the violation and standard violated;
 - (2) the hazard rating of said violation;
 - (3) the telephone contact number of the Division for further information;
 - (4) a statement that no action may be taken against employees for refusing to endanger themselves by working in an unsafe site, and

(5) a statement that if an employee is ordered or coerced to work at said unsafe site, he/she is to report same to either the Safety Officer of the agency or the Division.

SOURCE: Added by P.L. 19-19:2.

§ 87114. 30-Day Citation Removed.

A 30-Day Citation may be withdrawn only on the written approval of the Administrator or by written order of the Safety Review Board. If violation(s) cited in a 30-Day Citation are corrected any time within the thirty (30) days specified, the Division shall be informed and an inspection shall be made by same. If the violation has in fact been corrected, the Administrator shall cause the citation to be withdrawn and notice of same shall be provided to the Chief Officer of the agency and the Safety Officer. It shall likewise be posted at each affected work site at a place where it can be easily read by employees.

SOURCE: Added by P.L. 19-19:2.

§ 87115. Standing Citation Issued.

In the event that an agency of the Government of Guam does not take action to correct violations cited in a 30-Day Citation within the thirty (30) days specified, the Administrator shall recommend issuance of a Standing Citation to the Safety Review Board. In the event the Safety Review Board concurs in this recommendation, Notice of a Standing Citation and the written findings of the Safety Review Board shall be provided to the Chief Officer of the affected agency, its Safety Officer, the Governor, and the Speaker of the Guam Legislature. In addition, such Notice shall be posted at each affected work site in a place where it can be easily read by employees. The Standing Citation shall include the following information:

- (a) a description of the violation and standard violated;
- (b) the hazard rating of said violation;
- (c) the telephone number of the Division to contact for further information;
- (d) a statement that no action may be taken against employees for refusing to endanger themselves by working in an unsafe site, and
- (e) a statement that if an employee is ordered or coerced to work at said unsafe site, he/she is to report same to either the Safety Officer of the agency or the Division.

SOURCE: Added by P.L. 19-19:2.

§ 87116. Standing Citation Removed.

A Standing Citation may be withdrawn only on the written approval of the Administrator or on written order of Safety Review Board. If violation(s) cited in a Standing Citations are corrected at any time after issuance, the Division shall be informed and an inspection shall be made by the same. If the violation has in fact been corrected, the Administrator shall cause the citation to be withdrawn and notice of same shall be provided to the Chief Officer of the agency, the Safety Review Board, the Governor and Speaker of the Guam Legislature. It shall likewise be posted at each affected work site at a place where it can be easily seen by employees.

SOURCE: Added by P.L. 19-19:2.

§ 87117. Safety Review Board Created.

There is hereby created a Safety Review Board comprised of five (5) members who shall be appointed by the Governor with the advice and consent of the Legislature. One shall be an attorney who has experience in representing accident victims; one shall be an attorney who has experience in representing insurance companies in accident cases; one shall be an employee from a line department; one shall be an employee of an autonomous agency; and one shall be a medical practitioner. The Board shall choose a Chairman from among its members. At least three members must be present for there to be a quorum. All decisions of the Board shall be by a majority vote, there being at least four (4) members voting. The Board may hire an independent safety consultant, a secretary and its own attorney. All decisions rendered by the Board shall be binding on the Government and the Division and shall be in writing.

SOURCE: Added by P.L. 19-19:2.

§ 87118. Safety Review Board Meetings Public.

All meetings, hearings and deliberations of the Board shall be public and minutes kept. The only exception to open and public meetings, hearings and deliberations shall be those concerning personnel matters of the Division. Personnel matters of the Division shall not, however, mean meetings, hearings or deliberations on the evaluation of any agency's safety performance. No meeting, hearing or deliberation of the Board shall take place unless there is notice of same with the purpose stated thereof and the date, time and place at which it will be held. Such notice must have been advertised not less than two (2) times in a newspaper of general circulation

in Guam, the first publication being not more than seven (7) days before the scheduled meeting, hearing or deliberation, and the last publication being not less than two (2) days prior to the scheduled meeting, hearing or deliberation. The Board shall inform the Administrator, the Chief Officer of the affected agency and the Safety Officer, who shall inform employees working at the affected site. The Board may use additional media such as radio or television to advise the public if it finds it necessary to do so.

SOURCE: Added by P.L. 19-19:2.

§ 87119. Duties of Safety Review Board.

The Safety Review Board shall meet at least once a month to:

- (a) hear agency appeals from citations issued by the Division and to make a determination as provided herein; or
 - (b) to act on recommendations from the Division as provided herein. **SOURCE:** Added by P.L. 19-19:2.

§ 87120. Safety Review Board May Make Rules and Establish Fees.

In the hearings before it, the Board is not bound by the procedures set out in the Administrative Adjudication Law, 5 GCA Chapter 9, Article 2, but may establish its own procedures for the conduct of hearings and the admission of evidence. It shall establish its own procedures however, by promulgating rules according to the rule-making procedures set out in The Administrative Adjudication Law (5 GCA Chapter 9). The Board shall not be bound by the strict rules of statutory or common law relating to the admission or rejection of evidence, but may exercise its own discretion in these matters with a view to doing substantial justice. However, in making a determination whether to uphold a 30-Day Citation or to issue a Standing Citation, the Safety Review Board shall above all:

- (a) Place the burden of proof on the affected agency as to why said citation should not be upheld or issued;
- (b) Consider the potential danger to employees, as well as the potential liability to the Government should an accident occur; and
- (c) Consider whether the cited violation can be corrected within the financial and personnel means of the affected agency.

All findings of the Safety Review Board shall be in writing and furnished to the Chief Officer of the affected agency, its Safety Officer, and the Administrator. The Board may establish and amend a schedule of

reasonable fees and costs for copies of papers and records requested by interested parties or any person or entity, and for the filing and serving of papers and documents required by this Chapter. All such fees and costs charged and collected shall be paid into the Safety Review Board Fund.

SOURCE: Added by P.L. 19-19:2.

§ 87121. Appeals.

The Chief Officer of any agency of the Government of Guam may file a notice of appeal with the Safety Review Board from a citation issued by the Division. This Notice of Appeal shall be in writing stating briefly the reason the agency feels the citation is unjustified. A copy of said Notice shall be furnished to the Administrator. On receipt of said notice of appeal, the Chairman of the Safety Review Board shall schedule a hearing and inform both the Chief Officer of the affected agency, the Safety Officer and the Administrator. This appeal shall be timely heard, but in no event not later than sixty (60) days after receipt of said notice. If a citation has not been actually issued, the Division shall not post citation until a determination of the appeal by the Board. In the event the Board concurs with the affected agency, the Administrator shall not issue said citation or shall remove same as provided in Sections 87114 and 87116 of this Chapter. In the event the Board finds with the Division, the Board shall order issuance of the citation as provided in Sections 87113 and 87115 of this Chapter. In the event the Board concurs with the Administrator in the issuance of a Standing Citation, the Standing Citation shall be printed in full and publicized one (1) time a month in a newspaper of general circulation until cited violations are corrected

SOURCE: Added by P.L. 19-19:2.

§ 87122. May Compel Witnesses and Furnish Information.

In making a determination and in all proceedings before it, the Board shall have the same powers respecting administering oaths, compelling the attendance of witnesses, the production of documentary evidence, and examining witnesses as are possessed by the Superior Court. In case of contempt or disobedience by any person to any order of the Board or any subpoena issued by it, or of the refusal of any witness to testify to any matter regarding which he may be questioned lawfully, the Superior Court, on application by the Board, shall compel obedience and punish said person as in the case of disobedience of the requirements of a subpoena issued from the Superior Court or a refusal to testify therein. Nothing herein shall

be construed as giving to an agency immunity of any kind except as may already be conferred by law. The fees and traveling expenses of witnesses shall be the same as allowed witnesses in the Superior Court and shall be paid out of any appropriation available for the expenses of the Board.

SOURCE: Added by P.L. 19-19:2.

§ 87123. Division Priorities.

In addition to the priorities outlined in Sections 87105 and 87106 of this Chapter, during its first year of operation, the Division shall conduct its annual, follow-up and 'no notice' investigations of the Government of Guam as provided in Sections 87109 and 87110 of this Chapter. However, no citations shall be issued during this time for any violation whose corrective action requires substantial monetary expenditure. Citations will be issued for any safety or health violation not requiring any substantial expenditure of funds. During its first year of operation, the Division shall work with each agency of the Government of Guam to

- (a) explain applicable standards;
- (b) consider legislation amending or waiving any standards on an agency-by-agency basis;
- (c) assessing and determining a reasonable employee safety education and training program, including, but not limited to, the minimum number of hours to be spent by every employee in safety training or education;
- (d) recommending the percentage of each agency's budget which should be earmarked for safety, including, but not limited to, employee education and training;
- (e) determining the expenditure necessary to correct major lifethreatening violations; and
 - (f) reviewing employee accident compensation legislation.

In considering standards, training, education and enforcement of same, the Division shall prioritize same as follows:

- (a) toxic, chemical or hazardous substance storage and handling, including, but not limited to, the acquisition and use of protective gear and equipment;
 - (b) electrical and fire safety conditions;
 - (c) employee education and training in (a) and (b) above.

At the end of the first year, the Division shall begin issuing citations on all violated standards regardless of monetary expenditure needed to correct same.

SOURCE: Added by P.L. 19-19:2.

§ 87124. Report to the Governor.

Within one (1) year after the effective date of this Chapter, the Division shall furnish a report to the Governor, recommending on an agency-by-agency basis:

- (a) remedial rules and legislation with respect to safety standards;
- (b) detailing safety and health deficiencies, including, but not limited to, any citations issued, withdrawn, corrected and outstanding;
- (c) recommending appropriations to correct life-threatening safety deficiencies;
- (d) recommending appropriations for employee safety education and training;
- (e) recommending what percentage of each agency's budget should be set aside for safety; and
- (f) recommending remedial legislation with respect to employee accident compensation. A copy of this Report shall be furnished to the Legislature, together with the Governor's recommendations on same. Thereafter, a similar report shall be made to the Governor on an annual basis with a copy transmitted to the Legislature. Notwithstanding any provisions of Chapter IX of Public Law 19-5, this report shall be considered a public document

SOURCE: Added by P.L. 19-19:2.

§ 87125. Employees not to be Compelled to Work in Unsafe Conditions.

After citation of an unsafe working condition by the Division, no employee may be compelled or in any way coerced to work in an unsafe working condition. Anyone who compels or coerces an employee to do so shall be guilty of a misdemeanor, and, in addition, shall be held personally liable for actual and punitive damages should an employee suffer injury as a result of said unsafe working condition. Civil actions may be brought against such person without reference to the Government Claims Act. No disciplinary action may be brought against an employee who either refuses to work in an unsafe working condition after citation of same by the

Division, or who reports an unsafe working condition to either the Safety Officer or the Division. Refusal to work in an unsafe working condition after citation of same by the Division, or reporting of an unsafe working condition, shall not be considered in evaluating job performance or be considered as a factor in the promotion or demotion or adverse action of said employee.

SOURCE: Added by P.L. 19-19:2.

§ 87126. Unauthorized Removal of Citation Prohibited.

Anyone, other than the Administrator or his designee, who removes a citation issued by the Division shall be guilty of a felony, and, in addition, shall be held personally liable for actual and punitive damages of any employee who suffers injury as a result of removal of said citation. Civil actions may be brought against such person without reference to the Government Claims Act.

SOURCE: Added by P.L. 19-19:2.

§ 87127. Safety Training Mandatory.

Every employee, whether in the classified or unclassified service, shall spend a specified number of hours each year in the safety training of his or her agency to be eligible for promotion and/or cost of living adjustment. The specified number of hours shall be determined by the Legislature after the Division submits its Report as provided in Section 87124. The number of hours each employee must spend in minimum safety training may be adjusted from year-to-year by the Legislature.

SOURCE: Added by P.L. 19-19:2.

§ 87128. Severability.

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

SOURCE: Added by P.L. 19-19:2.
