

**5 GCA GOVERNMENT OPERATIONS
CH. 9 ADMINISTRATIVE ADJUDICATION LAW**

**CHAPTER 9
ADMINISTRATIVE ADJUDICATION LAW**

NOTE: This Chapter was included in the original Government Code of Guam enacted by P.L. 1-88 in 1952. In listing the source of sections in this chapter, only amendments will be listed. No further reference to P.L. 1-88 is necessary.

Article 1. Definitions.

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**ARTICLE 1
DEFINITIONS**

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§ 9101. Definitions.

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§ 9107.1. Rule: Definition Expanded to Include Guam Exclusive Economic Zone (EEZ) Agreements.

§ 9108. Administrative Adjudication.

NOTE: The word *Act* has been changed where appropriate to *law* to conform with the usage of this Code.

§ 9100. Citation.

This Chapter shall be known and may be cited as the *Administrative Adjudication Law*.

SOURCE: GC § 24000.

§ 9101. Definitions.

Unless the context otherwise requires, the definitions set forth in this Chapter govern its construction.

SOURCE: GC § 24001.

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§ 9102. Agency.

The word *agency* whenever used in this Chapter, shall mean and include any board, commission, department, division, bureau or officer of the territory of Guam authorized by law to make rules or adjudicate contested cases. Agency does not include any entity in the legislative and judicial branches and for the purposes of establishing charges of utility services, it does not include the Guam Power Authority or the Guam Waterworks Authority.

SOURCE: GC § 24002 amended by P.L. 9-69, 13-40 and 16-119. Repealed and reenacted by P.L. 27-110:2.

§ 9103. Agency Member.

Agency member means any person who is a member of any agency to which this Chapter is applicable.

SOURCE: GC § 24003.

§ 9104. Party.

Party includes the agency, the respondent and any person other than an officer or an employee of the agency in his official capacity who has been allowed to appear in the proceeding.

SOURCE: GC § 24004.

§ 9105. Respondent.

Respondent means any person against whom an accusation is filed or against whom a statement of issues is filed pursuant to this Chapter.

SOURCE: GC § 24005.

§ 9106. Hearing Officer.

Hearing officer means a hearing officer qualified under this Chapter.

SOURCE: GC § 24006.

§ 9107. Rule.

The word *rule* means any rule, regulation, standard, classification, procedure or requirement of any agency designed to have or having the effect of law or interpreting, supplementing or implementing any law enforced or administered by it, including any regulation under which the agency makes charges for services it provides, or to govern its

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organization or procedure, but does not include regulations, resolutions or directions relating solely to internal policy, internal agency organization or internal procedure which do not directly affect the rights of or procedures available to the public and does not include administrative adjudication.

SOURCE: GC § 24007 added by P.L. 9-69; amended by P.L. 13-40, 16-49 and 16-119.

§ 9107.1. Rule: Definition Expanded to Include Guam Exclusive Economic Zone (EEZ) Agreements.

The term *rule*, as used in this Chapter, shall include any proposed cooperative agreements and other agreements authorized pursuant to 1 GCA § 402.

SOURCE: Added by P.L. 23-17:7 (05/25/95).

COMMENT: The addition of this section was part of a law bringing Guam's claim to the EEZ into conformance with the *Law of the Sea* international agreement.

§ 9108. Administrative Adjudication.

Administrative adjudication means that administrative investigation, hearing and determination by any agency of issues or cases applicable to particular parties.

SOURCE: GC § 24008 added by P.L. 13-40, approved July 1, 1975.

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§ 9200. Applicability.

The procedure of any agency shall be conducted pursuant to the provisions of this Chapter in any proceeding before an agency in which legal rights, duties or privileges of specific parties are required by law to be determined after an agency hearing.

SOURCE: GC § 24100 enacted 1952; amended by P.L. 9-69.

§ 9201. Hearing: Initiation.

A hearing to determine whether an authority, license privilege or right should be conditioned, limited, suspended or revoked shall be initiated by filing an accusation. The accusation shall be a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the respondent is charged and the statutes and regulations which the respondent is alleged to have violated.

SOURCE: GC § 24101.

§ 9202. Same: Statement of Issues.

A hearing to determine whether an authority, license privilege or right should be granted, issued or renewed shall be initiated by filing a statement of issues. The statement of issues shall be a written statement specifying the statutes and regulations with which the respondent must show compliance by producing proof at the hearing, and in addition, any particular matters which have come to the attention of the initiating party and which would authorize a denial of the agency action sought.

SOURCE: GC § 24102.

§ 9203. Verification.

Unless made by a public officer acting in his official capacity or by an employee of the agency before which the proceeding is to be held, the accusation and statement of issues shall be verified. The verification may be on information and belief.

SOURCE: GC § 24103.

CROSS-REFERENCES: See 6 GCA § 3202, § 4308.

§ 9204. Jurisdiction.

The agency acquires jurisdiction of the respondent by service of a copy of the accusation or statement of issues, or if the hearing is held at the request of the respondent, by the filing of a petition for hearing by respondent.

SOURCE: GC § 24104.

§ 9205. Notice of Defense: Content.

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Within fifteen (15) days after service upon him of the accusation, the respondent may file with the agency a notice of defense in which he may:

- (a) Request a hearing.
- (b) Object to the accusation upon the ground that it does not state acts or omissions upon which the agency may proceed.
- (c) Object to the form of the accusation on the ground that it is so indefinite or uncertain that he cannot identify the transaction or prepare his defense.
- (d) Admit the accusation in whole or in part.
- (e) Prepare a new matter by way of defense.

SOURCE: GC § 24105.

§ 9206. Time for Filing Notice.

Within the period specified respondent may file one or more notices of defense upon any or all of the enumerated grounds, but unless the agency in its discretion authorizes the filing of a later notice, all such notices shall be filed within the period specified.

SOURCE: GC § 24106.

§ 9207. Effect of Filing Notice.

If respondent files a notice of defense within the period specified, he shall be entitled to a hearing on the merits. Failure to file a notice of defense or to file within the period specified shall constitute a waiver of respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

SOURCE: GC § 24107.

§ 9208. Notice Deemed a Denial.

A notice of defense shall be deemed a specific denial of all parts of the accusation not expressly admitted. Unless objection is taken as provided in § 9205(c) all objections to the form of the accusation shall be deemed waived.

SOURCE: GC § 24108.

§ 9209. Notice to be in Writing.

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The notice of defense shall be in writing signed by or on behalf of the respondent and shall state his mailing address. It need not be verified or follow any particular form.

SOURCE: GC § 24109.

§ 9210. Notice Served of Accusation.

The agency shall include with the copy of accusation served on respondent a form notice of defense entitled as such which may be a post card or other form in the discretion of the agency. In addition, the agency shall include in or with the copy of accusation served, a notice that respondent may request a hearing by filing a notice of defense within fifteen (15) days after service upon him of the accusation, and that failure to do so will constitute a waiver of right to a hearing. The notice of defense form, when signed by or on behalf of respondent and returned to the agency, will constitute a notice of defense.

SOURCE: GC § 24110.

§ 9211. Notice: Content.

The notice served with the accusation informing respondent of an opportunity for hearing shall be substantially in the following form:

Unless a written request for a hearing signed by or on behalf of the person named as respondent in the accompanying accusation is delivered or mailed to the agency within fifteen (15) days after the accusation was personally served on you or mailed to you, (here insert name of agency) may proceed upon the accusation without a hearing. The request for hearing may be made by delivering or mailing the enclosed form entitled 'Notice of Defense,' or by delivering or mailing a notice of defense as provided in § 9205 to: (insert here name and address of agency).

SOURCE: GC § 24111.

§ 9212. Service of Accusation: Means.

The accusation and all accompanying papers may be sent to respondent by any means selected by the agency. But unless the respondent has been served personally or by registered mail or by leaving a copy of the accusation and accompanying papers at his usual place of residence, or at his place of business, with some person of suitable age and discretion residing or working therein, or he shall have

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filed a notice of defense or otherwise appeared, the agency shall not make an order affecting adversely any rights of the respondent. Service may be proved in the manner authorized in civil actions. Service by registered mail shall be effective if a statute or agency regulation requires respondent to file his address with the agency and to notify the agency of any change, and if a registered letter containing the accusation and accompanying papers is mailed, addressed to respondent at the latest address on file with the agency. Service shall be made by any officer or employee of the agency or may be made by any person age eighteen (18) or over who has been authorized by the agency.

SOURCE: GC § 24112 amended by P.L. 3-26.

§ 9213. Accusation: Statement of Issues.

The statement of issues may be served and proof of service made in the same manner as in the case of an accusation. However, if the respondent requests the hearing, the agency shall deliver or mail the statement of issues together with notice of hearing to the parties as provided in § 9216.

SOURCE: GC § 24113.

§ 9214. Accusation: Amendment: Voluntary.

At any time before the matter is submitted for decision, the agency may file or permit the filing of an amended or supplemental accusation. All parties shall be notified. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but unless the agency in its discretion so orders, he shall not be entitled to file a further pleading. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

SOURCE: GC § 24114.

§ 9215. Hearing: Time and Place.

The agency shall determine the time and place of hearing.

SOURCE: GC § 24115.

§ 9216. Hearing: Notice: Form.

The agency shall deliver or mail a notice of hearing to all parties at least ten (10) days prior to the hearing. The hearing shall not be prior to

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the expiration of the time within which the respondent is entitled to file a notice of defense. The notice to respondent shall be substantially in the following form but may include other information:

You are hereby notified that a hearing will be held before (here insert name of agency) at (here insert place of hearing) on the _____ day of _____, 20____, at the hour of _____, upon the charges made in the accusation served upon you. You may be present at the hearing, may be but need not be represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to the issuance of subpoenas to compel the attendance of witnesses and the production of books, documents or other things by applying to (here insert appropriate office of agency).

SOURCE: GC § 24116.

§ 9217. Subpoena.

(a) Before the hearing has commenced the agency shall issue subpoenas and subpoenas duces tecum at the request of any party in accordance with the provisions of §1985 of the Code of Civil Procedure. After the hearing has commenced the agency hearing a case or a hearing officer sitting alone may issue subpoenas and subpoenas duces tecum.

(b) The process issued pursuant to Subsection (a) shall extend to all parts of Guam and shall be served in accordance with the provisions of §§1987 and 1988 of the Code of Civil Procedure.

(c) All witnesses appearing pursuant to subpoena, other than the parties or officers or employees of the Government, shall receive fees at the rate of Six Dollars (\$6.00) per day or Three Dollars (\$3.00) for each half (1/2) day or part thereof that the witness appears. The party at whose request the witness is subpoenaed shall pay the fee of the witness.

SOURCE: GC § 24117.

§ 9218. Depositions.

On the verified petition of any party, an agency may order that the testimony of any material witness residing within or without the territory of Guam be taken by deposition in the manner prescribed by law for depositions in civil actions. The petition shall set forth the nature of the

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pending proceedings; the name and address of the witness whose testimony is desired, a showing of the materiality of his testimony, a showing that the witness will be unable or cannot be compelled to attend; and shall request an order requiring the witness to appear and testify before an officer named in the petition for that purpose. Where the witness resides outside the territory of Guam and where the agency has ordered the taking of his testimony by deposition, the agency shall obtain an order of court to that effect by filing a petition therefor in the Superior Court.

SOURCE: GC § 24118. *District Court* changed to *Superior Court* by reason of P.L. 12-85, the Court Reorganization Act.

§ 9219. Oaths.

In any proceedings under this Chapter, any agency, agency member, secretary of an agency or hearing officer has power to administer oaths and affirmations and to certify to official acts.

SOURCE: GC § 24119.

§ 9220. Hearing Officer.

(a) **Hearing Officer.** A hearing officer shall preside over every hearing in a contested case. Except in the case of hearings before the Workers' Compensation Commission, the hearing officer shall be an attorney and may be an attorney in full time service of the government of Guam. The Attorney General has power to assign a staff of hearing officers for the purpose of hearing contested cases. For hearings before the Workers' Compensation Commission, the Commissioner of the Workers' Compensation Commission shall serve as hearing officer unless disqualified.

(b) For hearing before the Workers' Compensation Commission, the hearing officer may obtain services of a consultant proven to be knowledgeable with the Workers' Compensation laws, rules and regulations for the purpose of conducting such hearings.

(c) For hearings before the Workers' Compensation Commission, in the event that such consultant is not available, the hearing officer may retain services of an attorney, or a law firm, to assist the hearing officer in conducting hearings.

SOURCE: GC § 24120. Amended by P.L. 26-30:1.

§ 9221. Hearing Officer's Powers, Duties.

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A case may be heard by the agency with a hearing officer or by the hearing officer alone in the discretion of the agency. When the agency hears the case with a hearing officer, the hearing officer shall preside, rule on the admission and exclusion of evidence, and advise the agency on matters of law; the agency shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the hearing officer. When the hearing officer hears a case alone he shall exercise all powers relating to the conduct of the hearing.

SOURCE: GC § 24121.

§ 9222. Disqualification of Hearing Officer.

A hearing officer or agency member shall voluntarily disqualify himself and withdraw from any case in which he cannot accord a fair and impartial hearing or consideration. Any party may request the disqualification of any hearing officer or agency member by filing an affidavit prior to the taking of evidence at a hearing, stating with particularity the grounds upon which it is claimed that a fair and impartial hearing cannot be accorded. Where the request concerns an agency member, the agency shall determine the issue if it hears the case with the hearing officer, otherwise the hearing officer shall determine the issue. If the disqualification would prevent the existence of a quorum qualified to act in the particular case, an agency member shall not withdraw voluntarily or be subject to disqualification.

SOURCE: GC § 24122.

§ 9223. Continuances.

The agency may grant continuances at any stage of the proceedings.

SOURCE: GC § 24123.

§ 9224. Oral Evidence.

Oral evidence shall be taken only on oath or affirmation.

SOURCE: GC § 24124.

§ 9225. Rights of Parties.

Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If

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respondent does not testify in his own behalf, he may be called and examined as if under cross-examination.

SOURCE: GC § 24125.

§ 9226. Hearing: Rules.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded.

SOURCE: GC § 24126.

§ 9227. Evidence: Cross-examination.

(a) At any time ten (10) or more days prior to a hearing or a continued hearing, any party may mail or deliver to the opposing party a copy of any affidavit which he proposes to introduce in evidence, together with a notice as provided in Subsection (b). Unless the opposing party, within seven (7) days after such mailing or delivery, mails or delivers to the proponent a request to cross-examine an affiant, his right to cross-examine such affiant is waived and the affidavit, if introduced in evidence shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after request therefor is made as herein provided, the affidavit may be introduced in evidence, but shall be given only the same effect as other hearsay evidence.

(b) The notice referred to in Subsection (a) shall be substantially in the following form:

The accompanying affidavit of (insert here name of affiant) will be introduced as evidence at the hearing in (insert here title of proceedings). (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question him

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unless you notify (here insert name of proponent or his attorney) at (here insert address) that you wish to cross-examine him. To be effective, your request must be mailed or delivered to (here insert name of proponent or his attorney) on or before (here insert a date seven (7) days after the date of mailing or delivering the affidavit to the opposing party).

SOURCE: GC § 24127.

§ 9228. Evidence: Judicial Notice.

In reaching a decision official notice may be taken, either before or after submission of the case for decision, of any generally accepted technical or scientific matter within the agency's special field, and of any fact which may be judicially noticed by the courts of Guam. Parties present at the hearing shall be informed of the matters to be noticed, and these matters shall be noted in the record, referred to therein, or appended thereto. Any such party shall be given a reasonable opportunity on request to refute the officially noticed matters by evidence or by written or oral presentation of authority, the manner of such refutation to be determined by the agency.

SOURCE: GC § 24128.

§ 9229. Accusation: Amendment: Ordered.

The agency may order amendment of the accusation after submission of the case for decision. Each party shall be given notice of the intended amendment and opportunity to show that he will be prejudiced thereby unless the case is reopened to permit the introduction of additional evidence in his behalf. If such prejudice is shown the agency shall reopen the case to permit the introduction of additional evidence.

SOURCE: GC § 24129.

§ 9230. Hearing Before Agency.

(a) If a contested case is heard before an agency, the hearing officer who presided at the hearing shall be present during the consideration of the case and if requested, shall assist and advise the agency. Where a contested case is heard before an agency, any member who did not hear the evidence shall not vote in the decision.

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(b) If a contested case is heard by a hearing officer alone, he shall prepare a proposed decision in such form that it may be adopted as the decision in the case. A copy of the proposed decision shall be filed by the agency as a public record. The agency may adopt the proposed decision in its entirety, or may reduce the proposed penalty and adopt the balance of the proposed decision.

(c) If the proposed decision is not adopted as provided in Subsection (b) each party shall be furnished with a copy of the proposed decision. The agency may decide the case upon the record, including the transcript, with or without taking additional evidence, or may refer the case to the same or another hearing officer to take additional evidence. If the case is so assigned to a hearing officer he shall prepare a proposed decision as provided in Subsection (b) upon the additional evidence and the transcript and other papers which are part of the record of the prior hearing. A copy of such proposed decision shall be furnished to each party. The agency shall not decide any case provided for in this Subsection without affording the parties the opportunity to present either oral or written argument before the agency. If additional oral evidence is introduced before the agency, an agency member may not vote unless he heard the additional oral evidence.

SOURCE: GC § 24130.

§ 9231. Vote.

The members of an agency qualified to vote on any question may vote by mail or other written message.

SOURCE: GC § 24131.

§ 9232. Decision.

The decision shall be in writing and shall contain findings of fact, a determination of the issues presented and the penalty, if any. The findings may be stated in the language of the pleadings or by reference thereto. Copies of the decision shall be delivered to the parties personally or sent to them by registered mail.

SOURCE: GC § 24132.

CROSS-REFERENCES: See 1 CA § 717 for additional means of mailing to satisfy service requirement.

§ 9233. Decision: Effective Date.

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The decision shall become effective thirty (30) days after it is delivered or mailed to respondent unless a reconsideration is ordered within that time, or the agency orders that the decision shall become effective sooner, or a stay of execution is granted. A stay of execution may be included in the decision, or if not included therein may be granted by the agency at any time before the decision becomes effective.

SOURCE: GC § 24133.

§ 9234. Evidence: Notice of Defense Not Filed.

If the respondent fails to file a notice of defense or to appear at the hearing, the agency may take action based upon the respondent's express admissions or upon other evidence, and affidavits may be used as evidence without any notice to respondent; and where the burden of proof is on the respondent to establish that he is entitled to the agency action sought, the agency may act without taking evidence. Nothing herein shall be construed to deprive the respondent of the right to make any showing by way of mitigation.

SOURCE: GC § 24134.

§ 9235. Reconsideration.

(a) The agency may order a reconsideration of all or part of the case on its own motion or on petition of any party. The power to order a reconsideration shall expire thirty (30) days after the delivery or mailing of a decision to respondent, or on the date set by the agency as the effective date of the decision if such date occurs prior to the expiration of the thirty-day period. If action is not taken on a petition within the time allowed for ordering reconsideration the petition shall be deemed denied.

(b) The case may be reconsidered by the agency on all the pertinent parts of the record and such additional evidence and arguments as may be permitted, or may be assigned to a hearing officer. A reconsideration assigned to a hearing officer shall be subject to the procedure provided in § 9230. If oral evidence is introduced before the agency, an agency member may not vote unless he heard the evidence.

SOURCE: GC § 24135.

§ 9236. Petition to Reduce Penalty.

A person whose license has been revoked or suspended may petition the agency for reinstatement or reduction of penalty after a period of not

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less than one (1) year has elapsed from the effective date of the decision or from the date of denial of a similar petition. The agency shall give notice to the Attorney General of the filing of the petition and the Attorney General and the petitioner shall be afforded an opportunity to present either oral or written argument before the agency. The agency shall decide the petition, and the decision shall include the reasons therefor. This Section shall not apply if the statutes dealing with the particular agency contain different provisions for reinstatement or reduction of penalty.

SOURCE: GC § 24136.

§ 9237. Decision: Notice to Public Officer.

If respondent was required to register with any public officer, the agency shall send a notification to such public officer of any decision conditioning, limiting, suspending or revoking any authority, license, privilege or right after the decision has become effective.

SOURCE: GC § 24137.

§ 9238. Contempt.

If any person in proceedings before an agency disobeys or resists any lawful order or refuses to respond to a subpoena, or refuses to take the oath or affirmation as a witness or thereafter refuses to be examined, or is guilty of misconduct during a hearing or so near the place thereof as to obstruct the proceeding, the agency shall certify the facts to the Superior Court. The Court shall thereupon issue an order directing the person to appear before the Court and show cause why he should not be punished as for contempt. The order and a copy of the certified statement shall be served on the person. Thereafter, the Court shall have jurisdiction of the matter. The same proceedings shall be had, the same penalties may be imposed, and the person charged may purge himself of the contempt in the same way as in the case of a person who has committed a contempt in the trial of a civil action before the Superior Court.

SOURCE: GC § 24138 amended by P.L. 9-256.

§ 9239. Decision: Conclusive.

A decision of an agency which is in accordance with law and supported by substantial evidence shall be conclusive.

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SOURCE: GC § 24139.

§ 9240. Decision: Review.

Judicial review may be had of any agency decision by any party affected adversely by it. If the agency decision is not in accordance with law or not supported by substantial evidence, the court shall order the agency to take action according to law or the evidence.

SOURCE: GC § 24140.

§ 9241. Review: Procedure.

Judicial review may be had by filing a petition in the Superior Court for a writ of mandate in accordance with the provisions of the Code of Civil Procedure. Except as provided in this Section any petition shall be filed within thirty (30) days after the last day on which reconsideration can be ordered. The right to petition shall not be affected by the failure to seek reconsideration before the agency. Within thirty (30) days after request therefor and payment of the expenses of preparation and certification by the petition, the agency shall prepare and deliver to the petitioner the complete record of the proceedings or such parts of the record as are designated by the petitioner. The complete record includes the pleadings, all notices and orders issued by the agency, any proposed decisions by the hearing officer, the final decision, a transcript of all proceedings, the exhibits admitted or rejected, the written evidence and any other papers in the case. Where petitioner, within ten (10) days after the last day on which reconsideration can be ordered, requests the agency to prepare all or any part of the record, the time within which a petition may be filed may be extended until five (5) days after its delivery to him. The agency may file with the court the original of any document in the record in lieu of a copy.

SOURCE: GC § 24141. *District Court* changed to *Superior Court* by reason of P.L. 12-85, the Court reorganization Act.

§ 9242. Expenditures.

Any sums authorized to be expended under this Chapter by any agency shall be a legal charge against the funds of the agency.

SOURCE: GC § 24142.

ARTICLE 3
RULE-MAKING PROCEDURES

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- § 9300. Legislative Intent.
- § 9301. Adoption, Repeal, Recission or Amendment of Rules: Procedure.
- § 9302. Emergency Regulations and Orders of Repeal.
- § 9303. Adoption, Repeal, Recission, or Amendment of Rules and Regulations: Circulation and Filing.
- § 9304. Publication of Rules.
- § 9305. Publication of Rules by Agency.
- § 9306. Rules: Judicial Notice of.
- § 9307. Petition for Adoption of Rules.
- § 9308. Petition: Declaratory Ruling on Validity.
- § 9309. Petition: Declaratory Judgment by Court.
- § 9310. Validity.
- § 9311. Construction.
- § 9312. Repeal.

§ 9300. Legislative Intent.

It is the intent of the Legislature to establish a uniform method of making, adopting, promulgating, filing and publishing rules by all agencies of this Territory, to permit public participation therein and provide a method of making rules readily accessible to the public. It is not intended to give to any agency any additional rule-making power or authority and no additional or new power or authority to make or adopt rules is given to any agency by this law.

SOURCE: GC § 24200 added by P.L. 13-40.

§ 9301. Adoption, Repeal, Recission or Amendment of Rules: Procedure.

(a) Before any rule is adopted, amended, rescinded or repealed by any agency it *shall* cause a notice to be published in a newspaper of general circulation in Guam, *at least* ten (10) days prior to the date set for a hearing. Said notice *shall* include a statement of the time and place of said hearing, a reference to the subject matter of the proposed rule or rules, and refer to the fact that a copy of said proposed rule or rules is on file at the office of said agency, where it may be examined; provided, however, that no rule shall be invalid because the reference to the subject matter thereof in said notice may be inadequate or insufficient. *At least* five (5) copies of said proposed rule or rules *shall* be on file at the office of said agency from the date of publication of said notice continuously

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until the said hearing and any interested person *shall* be given an adequate opportunity to examine a copy of said proposed rule or rules. Copies of the proposed rule or rules will also be made available on the website of said agency for public review.

(b) On the date set for hearing any interested party in person or his authorized representative or both shall be afforded an adequate opportunity to participate in the formulation of the proposed rule or rules through the presentation of facts or argument or the submission of written data or views. All relevant matter presented shall be given full consideration by the agency, and a change in the proposed rule or rules because of facts, arguments, written data or views stated at the hearing will not require the setting of a new hearing unless it is so determined by said agency.

(c) Any agency may adopt procedures in addition to those required by this law including the holding of conferences and inviting and permitting the submission of suggestions, facts, arguments and views of interested persons in advance of the drafting of the proposed rule or rules.

(d) Any government of Guam department, agency, autonomous agency, office or instrumentality promulgating rules or regulations under Chapter 4 of Title 4, Guam Code Annotated, *shall* include, as part of the promulgation of such rules or regulations, an economic impact statement. This statement must be completed and made available to the public *prior* to any required hearings on the proposed rules or regulations. Any proposed personnel rules or regulations *shall* also be submitted to the Department of Administration for review, to provide for greater uniformity to the rule-making process throughout agencies and departments.

(e) No proposed rule or regulation *shall* be transmitted to *I Liheslaturan Guåhan* for consideration without an economic impact statement, and a review by the Department of Administration for personnel rules and regulations, nor *shall* any proposed rule or regulation go into effect without a completed economic impact statement and, in the case of proposed personnel rules and regulations, a written statement of approval by the Department of Administration.

(f) The economic impact statement required by Subsections (d) and (e) of this Section must directly address, at a minimum, the following:

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(1) The purpose and the need for the rule or regulation; an assessment of the risk and the cost of the imposed rule or regulation. In addition, government agencies proposing a new rule or regulation must include with the assessment, the justification for the new rule or regulation.

(2) The financial impact of the proposed rule or regulation upon those persons or corporate entities directly affected by the proposed rule or regulation, and upon the people and the economy of Guam.

(3) Any potential increase or decrease in the cost of living on Guam, or any specific increase or decrease in the price or availability of any good or service on Guam directly or indirectly attributable to the proposed rule or regulation.

(4) Any direct or indirect impact upon employment on Guam or any increase or decrease in the availability of a particular job or jobs, or jobs in general, attributable to the proposed rule or regulation.

(5) Any increase or decrease in the cost of doing business as an enterprise or industry on Guam, or any increase or decrease in doing business in general, which is attributable to the proposed rule or regulation.

(6) Any adverse or beneficial economic impact which is attributable to the proposed rule or regulation.

(g) The provisions of this Section are also applicable to any department, agency, autonomous agency, office or instrumentality of the government of Guam, which is proposing to increase any fee for service.

(h) An economic impact statement shall be produced by the department, agency, autonomous agency, office or instrumentality of the government of Guam which has proposed the rule, regulation or increase of fees for services.

(i) Exemptions. Any proposed rule, change of rule, regulation or request to impose or raise fees or rates shall be exempted from the requirements of this Act if the annual economic impact to the general public is Five Hundred Thousand Dollars (\$500,000.00) or less, as determined by the department, agency, autonomous agency, office or

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instrumentality proposing the rule, change of rule, regulation or request to impose or raise fees.

(j) A rule, change of rule, regulation or request to impose or raise fees adopted under the exemption granted in Subsection (i) of this Section shall, one (1) year after adoption, have a preliminary cost impact assessment performed by the Bureau of Budget and Management Research. If the preliminary cost impact assessment shows that the cost impact of the rule, change of rule, regulation, or request to impose or raise fees exceeds Five Hundred Thousand Dollars (\$500,000.00) annually, then an economic impact statement, as required in Subsections (d), (e), (f), (g) and (h), shall be prepared and transmitted to *I Liheslaturan Guåhan* within sixty (60) days after the completion of the preliminary cost impact assessment.

SOURCE: GC § 24200 added by P.L. 9-69; amended by P.L. 11-28, now § 24201 as amended by P.L. 13-40. Subsections (d) through (j) added by P.L. 25-173:2-8. Subsections (a), (d) and (e) amended by P.L. 31-220:2 (June 15, 2012).

§ 9302. Emergency Regulations and Orders of Repeal.

(a) The provisions of this Chapter shall not apply to an emergency regulation adopted pursuant to Subsection (b) of this Section.

(b) If an agency or government entity finds that the adoption of a regulation or repeal of a regulation is necessary to comply with Federal law, the regulation or repeal may be adopted as an emergency regulation or repeal. Any finding of an emergency shall include a description of the specific facts showing the need for immediate action. The statement and the regulation or repeal shall be filed immediately with the Legislative Secretary.

(c) The emergency regulation or order of a repeal shall become effective upon filing or upon any later date specified by the entity in a written instrument filed with, or as a part of the regulation.

(d) No regulation adopted as an emergency regulation shall remain in effect more than one hundred eighty (180) days.

(e) In the event that an emergency regulation was filed as an amendment to an existing regulation, upon failure of the adopting agency to adopt in accordance with the provisions of this law amendments to the permanent regulation, the regulation as it existed prior to such emergency amendment shall thereupon become effective and after notice to the adopting agency by the Legislative Secretary shall be retained in

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the place of such emergency amendment. In the event a regulation was originally adopted and filed as an emergency one and the adopting agency fails to comply with the provisions of this Chapter in adopting the regulation as a permanent one, such failure shall constitute a repeal thereof upon the expiration of one hundred eighty (180) days, and after notice to the adopting agency by the Legislative Secretary, shall be deleted.

(f) A regulation adopted as an emergency regulation, or, an emergency regulation substantially equivalent thereto, shall not be readopted as an emergency regulation.

SOURCE: GC § 24201.1; added by P.L. 16-44:13.

§ 9303. Adoption, Repeal, Recission, or Amendment of Rules and Regulations: Circulation and Filing.

It shall be the duty of every agency which may have been or hereafter may be clothed with or given any power or authority to make, adopt, promulgate or enforce rules to:

(a) Prepare the rules in a form approved by the Compiler of Laws and the Attorney General or other legal counsel of the agency, and where required by law, approved by the Governor, and which will conform to a standard system or code of rules adopted by the Legislative Secretary for the guidance of all agencies.

(b) File a printed and an identical electronic (word) version of the original approval copy of the proposed rules and regulations and one (1) duplicate, and one (1) printed and an identical electronic copy of the entire record of any public hearings on the rules being filed with the Legislative Secretary of the Guam Legislature. The Legislative Secretary shall maintain a permanent register of all rules, which shall include a notation of the date of filing thereon, and evidence of public hearing held by the agency. The Legislative Secretary shall also cause said permanent register to be published electronically on the Guam Legislature website and updated monthly. Proposed Rules should be presented to the Legislature as an Appendix to a draft bill, with a transmittal letter from the Governor or the Director of the agency which asserts the Governor's approval where required by law, and the Director's and Attorney General's approval as to compliance with each of the requirements of this Chapter (evidence of said approvals should in fact be

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contained as part of the agency record).

The subject line of the transmittal letter shall clearly include **“This is a Transmittal to *I Liheslaturan Guåhan* of Proposed Rules and Regulations pursuant to the Administrative Adjudication Law”**. If the proposed rules were not adopted by the agency or were not transmitted in full compliance with this Chapter, the Legislature may return the rules by oversight committee letter or legislative resolution to the agency for correction and new submittal in conformance with this Chapter shall be required.

(c) *No rule shall* be effective until after compliance with the provisions of this Section and ninety (90) calendar days have elapsed from the date of filing with the Legislative Secretary. The Guam Legislature may approve, disapprove or amend any rule within ninety (90) calendar days from the date of filing with the Legislative Secretary; except that any pending rules shall be deemed disapproved upon adjournment *sine die* of the Guam Legislature.

SOURCE: GC § 24201 added by P.L. 9-69; amended by P.L. 12-41; as § 9302 amended by P.L. 13-40. Subsection (b) further amended by P.L. 15-132. Reference to Legislative Secretary as officer who established form of Rules Publications changed to Compiler of Laws by reason of 1 GCA § 1603, § 1605. Subsection (b) repealed /reenacted by P.L. 22-96:1 (03/08/94). P.L. 22-96:2 exempted the Supreme Court rules from the application of this subsection. Entire section repealed/reenacted by P.L. 24-27:1 (05/16/97). Subsection (d) added by P.L. 31-139:1 (Nov. 17, 2011). Subsections (a), (b) and (c) amended, and (d) deleted, by P.L. 31-220:3 (June 15, 2012).

NOTE: The Legislative intent for the reenactment is:

The original intent of the Administrative Adjudication Law was to establish a uniform method of making, adopting, promulgating, filing and publishing of rules of agencies of the government of Guam. It was intended to promote public participation in the rule-making process.

The Guam Legislature finds that recent amendments to § 9303 of Title 5, Guam Code Annotated regarding the adoption, repeal, rescission or amendment process has resulted in cumbersome and inefficient methods for the adoption of rules. There is duplication and unnecessary delay, especially where laws are enacted requiring rules to implement them properly and promptly.

The existing requirement to have proposed rules submitted in bill form imposes an unnecessary additional burden on agencies and public participants. In addition to attending the public hearing on the proposed rules held by the agency proposing them, the public would be again asked to attend another public hearing on a bill to approve the proposed

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rules, should one be introduced. This repetitive process causes two (2) complete procedures to be engaged in: rule-making by the Executive Branch, and introduction and law-making of the same rules by the Legislative Branch.

§ 9304. Publication of Rules.

As soon as practicable after the effective date of the Act:

(a) The Compiler of Laws shall compile, index, codify and publish all the rules filed with him under the provisions of this Act. The compiled publication shall be entitled *Administrative Rules and Regulations, Government of Guam* and the Compiler of Laws may make non-substantive changes in the numbering and form of the rules as submitted by the agencies to cause the same to conform to a standard system. If, in any rule adopted by any agency, any standard, codes or manuals are adopted by reference, the same need not be copied in said published volume but only the rule as adopted shall be copied.

(b) The Compiler of Laws shall publish a quarterly bulletin in which he shall set forth the text of all rules filed during the preceding quarter excluding rules contained in the first publication by the Compiler of Laws of the *Administrative Rules and Regulations of the agencies of the government of Guam*.

(c) The Compiler of Laws may, in his discretion, omit from the bulletin or the compilation, rules the publication of which would be unduly cumbersome, expensive or otherwise inexpedient, if such rules are made available in printed or processed form on application to the adopting agency, and if the bulletin or compilation contains a notice stating how copies thereof may be obtained.

(d) Bulletins and compilations shall be made available without cost to officials of this Territory upon request and to other persons at a price fixed by the Compiler of Laws to cover publication and mailing costs.

(e) The Compiler of Laws shall supplement or revise the published volume of rules as often as necessary and at least once every two (2) years.

SOURCE: GC § 24202 added by P.L. 9-69; amended by P.L. 12-41, now § 24203 as amended by P.L. 13-40, and by P.L. 15-115.

§ 9305. Publication of Rules by Agency.

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Any agency may cause to be printed in pamphlet form those rules which were adopted by or affect such agency and may sell the same at cost. The proceeds of such sales shall be covered into the Treasury of Guam. The agency may also include in any such publication copies of statutes affecting such agency and its jurisdiction and such other information as would be helpful to parties affected by the laws, rules and administration of such agency.

SOURCE: GC § 24204 added by P.L. 13-40.

§ 9306. Rules: Judicial Notice of.

Any such rule or regulation adopted, approved, recorded and published as herein provided shall be judicially noticed by all courts and agencies of this Territory and the official publication thereof as herein provided shall be prima facie evidence that said rule or regulation was adopted, approved and filed as herein provided.

Any such rule or regulation may be cited or pleaded by volume, page and section number without copying the same.

The determination and construction of such rules and regulations in all actions except criminal actions shall be made by the court as a matter of law and not by the jury.

SOURCE: GC § 24205 added by P.L. 13-40.

§ 9307. Petition for Adoption of Rules.

Any interested person may petition an agency requesting the promulgation, amendment or repeal of any rule. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition. Provided that all such petitions shall be denied specifying the reasons therefor, or set for hearing in accordance with the provisions of § 9301 by said agency within sixty (60) days of the date of the filing thereof.

SOURCE: GC § 24203 added by P.L. 9-69, now § 24206 as amended by P.L. 13-40.

§ 9308. Petition: Declaratory Ruling on Validity.

On petition of any interested person, any agency may issue a declaratory ruling with respect to the applicability to any person, property or state of facts of any rule or statute enforceable by it. A declaratory ruling, if issued after argument and stated to be binding, is binding between the agency and the petitioner on the state of facts

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alleged, unless it is altered or set aside by a court. Such a ruling is subject to review in the Superior Court of Guam in the manner hereinafter provided for the review of decisions in the contested cases. Each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration and disposition.

SOURCE: GC § 24205 added by P.L. 9-69, now § 24207 as amended by P.L. 13-40.

§ 9309. Petition: Declaratory Judgment by Court.

(a) The validity of any rule may be determined upon petition for a declaratory judgment thereon addressed to the Superior Court of Guam, when it appears that the rule, or its threatened application, interferes with or impairs, or threatens to interfere with or impair the legal rights or privileges of the petitioner. The agency shall be made a party to the proceeding. The declaratory judgment may be rendered only after the petitioner has first requested the agency to pass upon the validity of the rule in question and the agency has so ruled or has failed to rule within ninety (90) days.

(b) The court shall declare the rule invalid if it finds that it violates provisions of law, exceeds the statutory authority of the agency or was adopted without compliance with statutory rule-making procedures.

SOURCE: GC § 24204 added by P.L. 9-69, now § 24208 as amended by P.L. 13-40.

§ 9310. Validity.

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

SOURCE: GC § 24206 added by P.L. 9-69, § 24209 as amended by P.L. 13-40.

§ 9311. Construction.

That portion of each and every act heretofore enacted into law which grants to any agency of the territory of Guam, the power to issue rules and regulations in any manner or method other than prescribed by this law is hereby specifically repealed as it is the intent that the method of adopting and promulgating administrative rules and regulations prescribed by this law is to be the only lawful method of adopting and

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promulgating administrative rules and regulations after the effective date of this law.

SOURCE: GC § 24210 added by Public Law 13-40, approved July 1, 1977.

§ 9312. Repeal.

All acts or parts of acts which are inconsistent with the provisions of this law are hereby repealed, but such repeal shall not affect pending proceedings

SOURCE: GC § 24207 added by P.L. 9-69, approved July 7, 1967, effective January 2, 1968; now § 24211 as amended by P.L. 13-40, approved July 1, 1977.
