

**TITLE 11 – HEALTH AND ECONOMIC
WELFARE SERVICES**

Chapters:

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- 02 Need for Health Facilities and Services
- 03 Medical Treatment
- 04 LBJ American Samoa Medical Center Authority Personnel Rules
- 05 LBJ American Samoa Medical Center Drug and Alcohol Abuse Policy.
- 06 LBJ American Samoa Medical Center Procurement Policy.

TITLE 11 – CHAPTER 01 – HEALTH CARE PLANNING

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11.0101 Federally funded programs and projects

ASHPDA consideration.

Public health-grant funding agencies, in reviewing applications for federal grants and loans, need to evaluate proposed projects and programs in terms of their consistency with local health goals, objectives, and priorities, and their expected impact on community health needs. The American Samoa Health Planning and Development Agency (ASHPDA) is equally concerned that federally funded projects and programs are consistent with and will support implementation of the American Samoa Plan for Health, and will contribute to the most effective utilization of limited health resources in the territory. Therefore, it is most appropriate, and in the best interest of both the federal funding agency and the territory of American Samoa, that the ASHPDA review and approve/disapprove applications for the proposed use of federal health funds in the territory.

History: Rule 9-80, eff 18 Jun 80, ASHDA Pro. and Crit. § 1(A).

11.0102 Authority-Review procedures and criteria.

- (a) Health services agencies (HSAs) are mandated by PL 93-641, § 1513(e) to perform the review and approval/disapproval function for certain proposed uses of federal health funds when the agencies are fully designated and authorized to do so by the Secretary of Health and Human Services. Under the provisions of 1536(d) of the Public Health Services Act, the ASHPDA assumes this function in American Samoa as though the territory were a health service area and the ASHPDA an HSA for the area. Locally, PL 16-26 also provides authority for the ASHPDA to perform this function.
- (b) Final rules were issued on 10 Aug 79 governing review and approval/disapproval of certain proposed uses of federal funds. These rules set forth the minimum procedures and criteria for health systems agency (ASHPDA) reviews under 1513(e) of this Public Health Services Act, and became effective 8 Nov 79. The ASHPDA received authorization from the Secretary of HHS to perform this function, effective 1 Jul 79.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit. § 1(B).

11.0103 Purpose.

The purpose of this chapter is to provide and communicate standardized review procedures and criteria for ASHPDA review of health-related grant proposals. The aim is to assure every applicant an objective and fair review and every funding agency a thorough rendering of territorial assessment and judgment.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit. § 1(G).

11.0104 ASHPDA dual role-American Samoa Plan for health.

The ASHPDA performs a dual role in the territory: that of planning, and resources development. The American Samoa Plan for Health, developed in cooperation with the American Samoa health coordinating council, is the principal means of expression of the health care needs of the territory and, when approved by the Governor, becomes a statement of territorial health policy. As a resource allocator, the ASHPDA attempts to ensure that

resources developed within the territory and flowing into the territory support and are consistent with local needs as expressed in the plan for health and annual implementation plan, and to provide timely technical assistance to potential applicants for federal funds, so as to minimize the likelihood of a completed application being disapproved, either by the ASHPDA or the funding agency.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 1(0).

11.0105 Review required when.

The ASHPDA will review and approve, or disapprove, each proposed use within the territory of federal funds:

- (1) appropriated under the Public Health Services Act; the Community Mental Health Centers Act, §§ 409 and 410 of the Drug Abuse Office and Treatment Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 for grants, contracts, loans, or loan guarantees for the development, expansion, or support of health resources; and
- (2) made available by the territory from an allotment to the territory under an act referred to in subsection (1) of this section for grants or contracts for the development, expansion, or support of health resources.

Appendix A contains a list of the proposed uses of federal funds currently subject to review. This list should not be considered to be exhaustive nor static, since funding agencies may from time to time identify on a case-by-case basis those special activities in the programs listed that are not subject to review and approval/disapproval, as well as those programs not listed that are subject to review and approval/disapproval. The list also indicates the role of other territorial and federal agencies in the review process. Appendix A is not a part of this code since the HHS Secretary may, from time to time, add or delete programs from the list.

The ASHPDA will review and comment only on any other application for federal grant funds not included in the list, if requested by the federal funding agency involved.

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History: Rule 9-80, eff 18 Jun 80 ASHPDA Pro, and Crit. § 1(E).

11.0106 Review not required when-Five-year continuation reviews.

- (a) The ASHPDA has no authority to review and approve, or disapprove:
- (1) noncompeting extension grant applications;
 - (2) supplemental grant applications which are for administrative increases in costs;
 - (3) noncompeting continuation grant applications unless one of the following occurs:
 - (A) The ASHPDA sends to their federal funding agency its request to review and approve or disapprove the application at least 9 months before the award date,
 - (B) The applicant proposes a change in funding level of 20% or more,
 - (C) The applicant or the federal funding agency determines that there has been a substantial change in the proposed or actual use of funds, (D) if none of the above, every 5 years beginning 8 Nov 79.
- (b) The provisions for review and comment on Indian tribe applications does not apply in American Samoa since there are no Indian tribes or Indian reservations in the territory.

History: Rule 9-80, eff 18 Jun 80. ASHPDA Pro. and Crit. § 1(F).

11.0107 ASHCC review.

In a parallel manner, § 1524(c)(6) of the Public Health Services Act requires the ASHCC to annually review and approve, or disapprove, any territory program plan and application submitted to HHS as a condition to the receipt of any funds under allotments made to states and territories under the acts cited in 11.0105(1). Procedures and criteria governing those reviews are contained in an ASHCC document entitled “Procedures and Criteria: Review of Territorial Plans and Applications”, which is codified in this chapter. Opportunity for the ASHCC to review and comment on each proposed use of federal funds

reviewed by the ASHPDA under 1513(e) is provided for under 11.0118.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit § 1(0).

11.0108 Reports on proposal development.

Providers of health services and other persons subject to ASHPDA review under § 1513(e) of the Public Health Services Act are required to submit periodic reports to the ASHPDA respecting the development of proposals for review.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit § 1(H).

11.0109 Letter of intent to file federal funds-application.

- (a) Prior to the submission of an application for federal funding, the proposal sponsor should send a letter to the ASHPDA indicating:
- (1) the nature of the proposal, including the problem or need which the project or program is to meet;
 - (2) the grant program from which funding is being requested; and
 - (3) the probable date the application will be filed with the ASHPDA and the funding agency. It is particularly important in the case of construction projects that the letter of intent be submitted at the earliest possible opportunity in the course of planning of such projects. Such letter of intent must be in the form and include all of the information described in Appendix C.

This will allow for scheduling of projected workload and provide that any assistance requested of the ASHPDA can be provided in a timely fashion. This will also enable the ASHPDA to determine if the proposed project also requires a review under PL 16-26, Certificate of Need.

- (b) While federal funding cycles will largely dictate the scheduling of letter of intent and application submissions, it is recommended that, at a minimum, the letter of intent should be filed no fewer than 30 days prior to formal submission of the application. The ASHPDA will acknowledge receipt of the letter of intent and may schedule a

presubmission conference. (c) Ideally, project or program sponsors should meet with representatives of the ASHPDA during the planning/development phase of project proposals so that the ASHPDA may make the sponsor aware of the agency's plans, standards, criteria, and review procedures. In this manner the ASHPDA can share its findings of health status and health system needs with the sponsor and make other pertinent data and information available.

History: Rule 9-80, eff 13 Jun 80, ASHPDA Pro, and Crit. § 1(I).

11.0110 Presubmission conference.

If a presubmission conference is scheduled, the staff person assigned to the project will prepare copies of pertinent information for the use of the proposal sponsors. This will include copies of the adopted plans, standards, and criteria relating to the proposed project. At this time the ASHPDA will also inform the sponsor whether or not the proposal also requires review under the provisions of PL 16-26, Certificate of Need.

The ASHPDA will coordinate, to the maximum extent possible, its reviews of projects under these procedures and its reviews of new institutional health services under PL 16-26 (see 11.0119). This information will be discussed with the proposal sponsor to indicate areas of conformance or nonconformance of the proposed project to the American Samoa Plan for Health and the Territorial Medical Facilities Plan. Hopefully, these considerations will have occurred during the program planning process that resulted in the grant application's development. In such a situation, the presubmission conference will be limited largely to review process requirements such as the scheduling of meetings, number of copies required, etc.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit § 1(J).

11.0111 Applications-Submission.

Applications for federal funds must be submitted at the times and in the form and manner prescribed by the funding agency. At the time the applicant submits the application to the funding agency, 3 copies will be simultaneously submitted to the ASHPDA. The ASHPDA requires that at a minimum the applicant

supply the information in Appendix B when making application. If the information required by the funding agency does not include that stipulated in Appendix B, the applicant must prepare supplemental material to be submitted to the ASHPDA with the application. Upon receipt of an application, the ASHPDA staff will review the application for completeness. If the application is determined to be incomplete, the ASHPDA will notify the applicant immediately of the areas of incompleteness. Presubmission conferences will help to ensure that an application will be complete at the time of submission.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(A)(1).

11.0112 Applications-Noncompeting continuation grants.

Applications for noncompeting continuation grants will also be submitted to the ASHPDA simultaneously with submission to the federal funding agency. All such applications will be reviewed by the ASHPDA. However, the ASHPDA shall only have approval/disapproval authority over those applications meeting the conditions of 11.0106(a)(3).

History: Rule 9-80, 18 Jun 80, ASHPDA Pro. and Crit. § 2(A)

11.0113 Applications-Confidential or proprietary information.

If an application contains material which the applicant believes to be confidential or proprietary and therefore believes should not become public, (he applicant may submit a summary of this material to the federal funding agency. Upon determination by the federal funding agency that (1) the material is confidential or proprietary and (2) the summary is full and accurate, the applicant may submit the summary to the ASHPDA along with the application, deleting the portion of the application which has been summarized.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(A)(3).

11.0114 Applications-Allotment-fund proposals.

A proposal for using funds available from a territorial allotment which is subject to ASHPDA review under

11.0105(2) must be submitted to the ASHPDA by the territorial program agency (department of health). These proposed projects must be submitted to the ASHPDA at the same time the application for allotment funds is submitted to the ASHCC. The ASHPDA must be allowed a minimum of 60 days to review the proposed uses of allotment funds. The information requirements outlined in 11.0111, as contained in Appendix B, also apply to applications containing proposed uses of allotment funds.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit. § 2(A)(4).

11.0115 Notice of review-Deadline-Content.

(a) Within 7 days of receipt of an application subject to review under 11.0105 or 11.0106, the ASHPDA will send notification to affected persons of the beginning of the review, including a review schedule and the period during which a public hearing may be requested. Such notification shall include:

- (1) the proposed schedule for the review;
- (2) the period during which a public hearing during the course of the review may be requested by persons directly affected as defined in subsection (b) of this section; and
- (3) the manner in which notification of the time and place of any hearing so requested will be provided.

(b) “Affected persons” includes:

- (1) the applicant;
- (2) major health and health-related institutions and agencies in the territory;
- (3) agencies with which the ASHPDA must coordinate its activities pursuant to § 1513(d) of the Public Health Services Act;
- (4) territorial health program agencies, if allotment funds are involved;
- (5) those members of the public who are to be served by the proposed projects; and
- (6) the appropriate federal funding agency.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(A)(5).

11.0116 Notice of review-Medium.

Written notification to affected members of the public may be provided through newspapers of general circulation and public information channels. All other affected persons shall be notified by mail.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit. § 2(A)(6).

11.0117 Time allowed for review-Submissions near funding deadlines.

(a) The ASHPDA will be allowed at least 60 days from the date of notification of the beginning of a review to complete its review of any proposal or application. The ASHPDA will complete its review in 60 days or less unless the appropriate federal funding agency or territorial program agency specifies in writing a longer period with respect to a particular program or project.

(b) Where a proposed use of federal funds is submitted to the ASHPDA for review less than 120 days prior to the end of the period of availability of the funds involved, the federal funding agency, at its option, after consultation with the ASHPDA and following its determination that the application could not reasonably have been submitted to the ASHPDA at least 120 days prior to the end of the period of availability of funds, make the grant, loan, or loan guarantee or award the contract so as to preserve the availability of the funds. However, in such cases, no federal funds may be expended until:

- (1) the ASHPDA has approved the application; or
- (2) the ASHPDA has notified the funding agency that it will not disapprove the application; or
- (3) the period for ASHPDA review has passed without the ASHPDA having notified the funding agency of its disapproval; or
- (4) the Secretary has determined, notwithstanding the ASHPDA’s disapproval, to make such funds available.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(B)(1).

11.0118 Plan implementation committee comment.

The ASHPDA will submit copies of each application under review to the plan implementation committee (PIC) of the ASHCC within 7 days of the beginning of the review.

The plan implementation committee will be allowed 14 days from the receipt of the application to submit its comments to the ASHPDA. The ASHPDA will not make its final determination on any application until the time allowed the PIC for comments has elapsed or until such comments have been received, whichever comes first.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(B)(2).

11.0119 Coordination with certificate of need reviews.

To the extent possible, and whenever appropriate, the ASHPDA will coordinate its review of proposed uses of federal funds with certificate of need reviews. Applicants who anticipate submitting both applications for certificate of need and use of federal funds for the same project are encouraged to consult with the ASHPDA about coordinated submission of the applications. Approval of a project under one type of review in no way constitutes approval for the same project under another type of review.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(11)(3).

11.0120 Notice of review findings.

- (a) The ASHPDA will mail, no later than the close of the first business day following the end of the review period, to the applicant and the appropriate federal funding agency or territorial program agency, written notification of its approval or disapproval of the proposed use of federal funds and the reasons for such approval or disapproval.
- (b) Any proposed use of federal funds with respect to which notification has not been provided by the ASHPDA in accordance with these procedures shall be deemed not to have been disapproved by the ASHPDA.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(B)(4).

11.0121 Appraisal of applicants and others-Reports of reviews-Public access.

- (a) Applicants and other persons subject to ASHPDA review under these procedures shall be notified, upon request, of the status of the agency review of projects, of findings made in the course of such reviews, and other appropriate information respecting such reviews.
- (b) At least annually, the ASHPDA shall publish a report of the reviews being conducted (including the status of each review) and of the reviews completed by the agency since the publication of the last report, and a general statement of the findings and decisions made in the course of such reviews.
- (c) All applications (or summaries thereof) reviewed by the ASHPDA and all other written materials pertinent to such reviews shall be accessible to the public for viewing or copying at the ASIIPDA office in the LBJ Tropical Medical Center.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit. § 2 (B)(5).

11.0122 Public hearing.

- (a) The ASHPDA shall provide for a public hearing during the course of any agency review if requested by one or more persons directly affected by the review, if such request is made within 14 days of the notification of the beginning of the review. "Persons directly affected" by the review include:
 - (1) the applicant;
 - (2) entities with which the ASHPDA must coordinate its activities pursuant to § 1513(d) of the Public Health Services Act;
 - (3) entities located in the territory which provide services or conduct activities similar to the proposed services or activities under review or which, prior to the receipt by the ASHPDA of the application for review, have formally indicated an intention to provide similar services or conduct similar activities in the future; and

(4) members of the public who are to be served by the projects. (b) Anyone may present testimony at a public hearing.

(c) Where such a hearing is requested, the ASHPDA shall, prior to such hearing, provide notice of such hearing, in accordance with 11.0115.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 2(B)(6).

11.0123 Scope of review-Substantial conformance principle-Criteria use.

(a) The role of the ASHPDA under § 15 13(e) of the Public Health Services Act is to approve or disapprove a proposal on the basis of its conformance with the plans and the criteria it has developed and adopted. ‘The ASHPDA will not involve itself in evaluation of the technical or scientific merit of the proposals. It is the place of the federal funding agency, in its review of proposals, to make determinations of technical and scientific merit, to give consideration to program priorities (sometimes established statute), and to evaluate and judge the relationship of the proposal to other parts of the program.

(b) It is not appropriate to prescribe that a finding of inconsistency with a single criterion requires agency rejection of the project. However, it is not expected that projects which are found to be inconsistent with the plan for health would be approved by the ASHPDA unless exceptional circumstances or significant inaccuracies in the plan were demonstrated. The general principle remains, as in other kinds of review by the ASHPDA, that approvals, disapprovals, and recommendations are to be based on a proposal’s substantial conformance with all applicable criteria taken as a whole.

(c) The criteria set forth in 11.0124 have been adopted by the ASHPDA for utilization in conducting reviews of the proposed uses of federal funds in the territory. The ASHPDA will utilize these criteria as appropriate for the particular review being conducted or the type of health service reviewed.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 3 (part).

11.0124 Criteria.

The criteria adopted by the ASHPDA are:

(1) Health Plans Relationship. The relationship of the health services being reviewed to the American Samoa Plan for Health and the ASHPDA annual implementation plan:

(2) Long-range Plans. The relationship of services being reviewed to the long-range development plan (if any) of the persons providing or proposing such services;

(3) Need and Under-served Groups. The need that the population served or to be served has for the services proposed to be offered or expanded, and the extent to which low-income persons, racial and ethnic minorities, women, handicapped persons, and other under-served groups are likely to have access to those services. In the case of a reduction or elimination of a service, including the relocation of a facility or a service, the need that the population presently served has for the service, the extent to which that need will be met adequately by the proposed relocation or by alternative arrangements, and the effect of the reduction, elimination or relocation of the service on the ability of low-income persons, racial and ethnic minorities, women, handicapped persons, and other under-served groups to obtain needed health care;

(4) Alternatives. The availability of alternative, less-costly, or more effective methods of providing such services;

(5) Financial Feasibility and Impact. The immediate and long-term financial feasibility of the proposal and the probable impact of the proposal on the costs of and charges for providing health services in the territory;

(6) Health-care System Relationship. The relationship of the services proposed to be provided to the existing health-care system of the territory;

(7) Resources Availability and Alternative Uses. The availability of resources (including health manpower, management personnel, and funding for capital and operating needs) for the provision of the services proposed to be provided and the

availability of alternative uses of such resources for the provision of other health services;

(8) Ancillary or Support Services Relationships. The relationships, including the organizational relationships, of the health services proposed to be provided to ancillary or support services in the territory;

(9) Contribution to the Under-served and Access-restricted. The contribution of the project in meeting the health-related needs of member of medically under-served groups and members of groups which have traditionally experienced difficulties in obtaining equal access to health services (for example, low-income persons, racial and ethnic minorities, women, and handicapped persons), particularly those needs identified in the applicable health systems plan and annual implementation plan as deserving a priority;

(10) Construction Projects. In the case of a construction project, the relationships of the project to the Territorial Medical Facilities Plan and:

(A) the costs and methods of the proposed construction, including the costs and methods of energy provision; and

(B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project;

(11) HMO Needs and Circumstances. The special needs and circumstances of health maintenance organizations (HMOs) for which assistance may be provided under Title XIII of the Public Health Services Act. These needs and circumstances must be limited to:

(A) the needs of enrolled members and reasonably anticipated new members of the HMOs or proposed HMO for the health services, proposed to be provided by the organization;

(B) the availability of these health services from nonHMO providers or other HMOs in a reasonable and cost-effective manner which is consistent with the basic method or

operation of the HMOs or proposed HMO. In assessing the availability of such health services from non-HMO providers or other HMO providers, the agency must consider only whether the health services from these providers:

(I) would be available under a contract of at least 5 years duration;

(II) would be available and conveniently accessible through physicians and other health professionals associated with the HMO or proposed HMO. (For example, whether physicians associated with the HMO have or will have full staff privileges at a non-HMO hospital.);

(III) would cost no more than if the health services were provided by the HMO or proposed HMO; and

(IV) would be available in a manner which is administratively feasible to the HMO or proposed HMO;

(C) other factors the agency may propose and the Secretary may find to be consistent with the purpose or Title XIII of the Public Health Services Act;

(12) Research Project Needs and Circumstances. The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages;

(13) Nonlocal Provider Needs. The special needs and circumstances of those entities which provide a substantial portion of their services or resources or both to individuals not in the health services areas in which the entities are located or in adjacent health service areas. These entities may include medical and other health profession schools, multidisciplinary clinics, and specialty centers;

(14) Energy Conservation. The special circumstances of health-care institutions with respect to the need for conserving energy.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 3 (part).

11.0125 Funding despite disapproval-Review requirement.

If the ASHPDA, in accordance with the applicable provisions of 42 CFR Part 122, Subpart E, disapproves a proposed use in the territory of federal funds, the HHS Secretary may not make such federal funds available for such use until he has made, upon the request of the entity making such proposals, a review of the agency decision.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 6(A).

11.0126 Funding despite disapproval-Review requests.

To be effective, a request for review of an ASHPDA disapproval of proposed use of federal funds must be:

- (1) received by the federal funding agency, in such form and manner as may be prescribed by the federal funding agency, not later than 15 days after the provision of notice to the applicant of disapproval of the proposed use of federal funds by the ASHPDA in accordance with 11.0124; and
- (2) accompanied by a justification for approval by the Secretary of the proposed use of federal funds despite the ASHPDA’s disapproval, including detailed responses to the reasons given by the ASHPDA for its disapproval.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 6(B).

11.0127 Funding despite disapproval-Explanation.

The Secretary may make such federal funds available for such use, notwithstanding the disapproval of the ASHPDA. In such an event the Secretary will submit to the applicant and the ASHPDA a detailed statement of the reasons for the decision.

History: Rule 9-80. eff 18 Jun 80, ASHPDA Pro, and Crit. § 6(C).

11.0128 Rules Amendment-Notice.

When upon its own initiative the ASHPDA proposes to adopt, amend, or repeal all or any part of the procedures and criteria codified in this chapter a notice of such proposal will be published in at least one territorial newspaper of general circulation stating that new/revised procedures and/or criteria have been proposed for adoption and that these

proposed procedures are available at the ASHPDA offices for public viewing and/or copying. The term “amend” includes any editorial and/or substantive changes.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro. and Crit § 7(A).

11.0129 Rules amendment-Comment period.

Interested persons will be allowed 30 days from the date of publication to comment on the proposed review procedures and criteria.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 7(B).

11.0130 Rules amendment-Distribution of proposals.

Copies of the proposed procedures and criteria will be distributed:

- (1) to all entities with which the ASHPDA must coordinate its activities;
- (2) to units of territorial government related to health matters;
- (3) to the American Samoa health coordinating council.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 7(c).

11.0131 Rules amendment-Adoption.

When the period for public comment has expired the ASHPDA will consider any comments received and will formally adopt the proposed procedures and criteria.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 7(D).

11.0132 Rules amendment-Distribution after adoption.

Adopted procedures and criteria will be distributed to the entities in 11.0130 and to the Region IX HHS offices.

History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 7(E).

11.0133 Appendix A noncode status.

Appendix A is not a part of this code since the Secretary may, from time to time, add or delete programs from the list.

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History: Rule 9-80, eff 18 Jun 80, ASHPDA Pro, and Crit. § 7(F).

APPENDIX A

PROPOSED USFS OF FEDERAL FUNDS SUBJECT TO REVIEW ASHPDA

Central A-95
 SHCC Office
 Office
 Alcohol, Drug Abuse and Mental Health
 13.235 Drug Abuse Community Programs X
 X X
 13.237 Mental Health-Hospital improvement grants
 X
 13.238 Mental health hospital staff dev. Grants X
 X
 13.252 Alcohol treatment and rehab. X X
 13.257 Alcohol formula grants
 (state plan & app. for allotment) X
 13.257 Alcohol grants X
 /projects funded under allotments)
 13.259 Mental Health- X
 Children’s services X X
 X
 13.269 Drug abuse prevention formula grants
 /projects funded under allotment)
 13.275 Drug abuse education programs X
 X X
 13.290 Special alcoholism projects to implement X
 X X
 Uniform Act
 13.295 Community mental health centers-Comp.
 X X X
 service support
 13.295 State plan X X
 X
 13.898 Alcoholism demonstration X
 X
 13.899 Alcohol abuse and alcoholism prevention X
 X
 demonstration
 13.269 Drug abuse prevention formula grants X
 X
 Health Resources Administration (HRA)
 13.220 State medical facilities

plan & app. for allotment X
 X
 13.253 Medical facilities
 construction X X
 13.253 Projects funded under allotment X
 X
 13.887 Medical facilities construction projects grants
 X X
 Health Services Administration (HSA)
 Comprehensive public health service (funded under
 allot)
 13.217 Family planning projects X
 X X
 13.224 Community health centers X
 X X
 13.246 Migrant health X X
 X
 13.258 National Health Service Corps (NHSC) X
 X X
 13.260 Family planning X X
 X
 13.284 Emergency Medical Services (EMS) X
 X X
 13.292 Sudden Infant Death Syndrome (SIDS) X
 X X
 13.296 Comprehensive hemophilia diagnosis X
 X
 & treatment centers
 13.823 Health Under-served Rural Areas (HURA) X
 X
 13.882 Hypertension X X
 13.888 Home health X X
 13.890 Genetic disease counseling & education X
 X
 13.211 Crippled children’s services X
 X X
 (state plan & appl, for allot.)
 13.232 Maternal & Child Health (MCH)
 X X X
 (state plan & appl. for allot.)
 13.232 Maternal & infant projects X
 X X
 13.232 Children & Youth projects X
 X X
 Center for Disease Control
 13.210 Comp. public health services health
 incentives formula grants (state plan & app.)
 X X X
 13.210 Comp. public health services

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(projects funded under allot.)	X	
X		
Center for Disease Control (Continued)		
13.266 Childhood lead-based paint poisoning projects	X	X
13.267 Urban rat control	X	X
X		
13.268 Childhood immunization (statewide)	X	
X		
13.283 Center for Disease Control (CDC)		X
X		
13.977 V.D. (statewide)	X	
X		
13.978 V.D. research, demonstration	X	
X		
13.979 Influenza immunization	X	X
13.980 Preventive health services fluoridation		X
X		
13.950 Health education	X	
Office of the Assistant Secretary for Health (QASH)		
13.256 Health Maintenance Organization (HMO) development	X	X
X		

- (A) Estimates of present and projected target population (those persons to which the project is directed),
 - (B) Socioeconomic characteristics of the target population,
 - (C) Age, sex, language, race, and/or ethnic characteristics of the target population,
 - (D) Present and projected annual capacity of the same or similar health services as those proposed, provided to the target population,
 - (E) A description of the methodology employed and the results obtained from the study which established that the population served or proposed to be served has a real need for the proposed project. (How did you determine there was a need for the proposed program, project, or services?);
- (4) Alternatives and Cost-effectiveness. A brief statement describing that other projects were considered (in order to meet the need of the target population), but rejected due to the fact that the proposed project was more cost-effective;
 - (5) Financial Statements. Financial statements for the past 3 years: Statements shall include, as a minimum, amounts budgeted and amounts expended;
 - (6) Linkage With Other Services. A statement indicating linkages with other services in the target area in order to assure comprehensive, coordinated, and continuous services;
 - (7) Administration. A statement including the following items:
 - (A) Management structure and organization design (including organization charts),
 - (B) Brief summary of main procedures and methodologies to achieve the objectives of the proposed project,
 - (C) Task distribution among staff (including job descriptions);
 - (D) Renames of all managerial professional staff (if available),

APPENDIX B

MINIMUM MATERIAL REQUIRED BY THE AMERICAN SAMOA HEALTH PLANNING AND DEVELOPMENT AGENCY

- (1) Health Plans Relationship. A brief statement indicating the relationship between the services proposed by the applicant and the American Samoa Plan for Health and Annual Implementation Plan (AIP). In other words, the applicant shall demonstrate familiarity with those needs, goals, objectives, and recommendations (included in the plan and AIP) which are related to the proposed project;
- (2) Long-range Plans. A brief statement indicating the relationship of the services proposed with the applicant's long-range plans, if any. (A copy of this plan shall be attached to the application.);
- (3) Population Served and Need. A statement identifying the population that will be served by the project and the need that this population has for the proposed project. This statement shall include the following information:

(E) Summaries of the projected budgets for the life of the project;

(8) Support and Ancillary Services. Agreements, contracts, letters, or other evidence that the proposed services will coordinate with and make use of existing support and ancillary services in the area to be served;

(9) Minorities, Women, and Handicapped Contribution. A brief statement indicating the contribution of the project in meeting the needs of minorities, women, and handicapped individuals in the health services area.



[End of Title 11 – Chapter 1]

APPENDIX C

AMERICAN SAMOA HEALTH PLANNING AND DEVELOPMENT AGENCY L.B.J. TROPICAL MEDICAL CENTER REVIEW OF CERTAIN PROPOSED USES OF FEDERAL FUNDS

Notice of Intent for Construction Project

Facility

Name _____

StreetAddress

City _____ Zip _____

Applicant _____ (if different _____)

_____ Street Address (if different)

City _____ Zip _____

Facility!

Administrator/Manager _____ P hone _____

I hereby submit and declare, under penalty of perjury, that the project described and each statement, amount, and supporting document included is true and correct to the best of my knowledge and belief.

Name _____

Title _____

Date _____

Signature

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TITLE 11 – CHAPTER 02 – NEED FOR HEALTH FACILITIES & SERVICES	11.0234	Public comment, notice, and document access.
Sections:	11.0235	Notice of beginning of review.
11.0201 Purpose.	11.0236	Public hearings-When ordered-Request deadline.
11.0202 Authority.	11.0237	Public hearings-For reconsideration of agency finding.
11.0203 Short title.	11.0238	Public hearings-Notice.
11.0204 Applicability.	11.0239	Public hearings-When held-Place.
11.0205 Certificate of need required when.	11.0240	Public hearings-Conduct.
11.0206 Application submits to jurisdiction-Applicability rulings.	11.0241	Public hearings-Summaries- Applicant comments Reconsideration findings.
11.0207 Definitions.	11.0242	Staff reports-Required when.
11.0208 Time period computation.	11.0243	Staff reports-Content.
11.0209 Forms, applications, and procedures.	11.0244	Staff reports-Filing and distribution-Contents.
11.0210 Communications between applicant and staff or review board.	11.0245	Advocacy by applicant.
11.0211 Public records on applications.	11.0246	Deadline for agency action and documentation-Failure to act.
11.0212 Public records designated-Status appraisal and information providing.	11.0247	Prerequisites for agency action.
11.0213 Enforcing agency appraisal.	11.0248	Review board meetings- Announcement and public nature-Presiding officer.
11.0214 Annual reports.	11.0249	Review board meetings-Notice and transmittal of material to members.
11.0215 ASHPDA-Duties.	11.0250	Review procedure.
11.0216 ASIIPDA-Location-Address-Telephone number.	11.0251	Official record of review Board action.
11.0217 Review board-Composition-Chairman-Terms.	11.0252	Preliminary action-Permitted-Procedure.
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11.0221 Notice of intent-Title-Content.	11.0236	Dismissal-Procedures.
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11.0224 Preapplication conferences.	11.0259	Findings required.
11.0225 Application-Required-Number of copies.	11.0260	Determination criteria-Consideration.
11.0226 Application-Standard and emergency.	11.0261	Determination criteria-Services and equipment.
11.0227 Application-Emergency review justification.	11.0262	Determination criteria-New facilities for new services.
11.0228 Application-Form-Content.	11.0263	Determination criteria-New facilities for existing services.
11.0229 Application-Evaluation-Requirement restrictions.	11.0264	Applicant demonstration of need-Determination data resources.
11.0230 Application-Justification responsibility-Supporting evidence.	11.0265	Issuance of certificate-Director action contrary to board.
11.0231 Application-Emergency form.	11.0266	Term of determination-Changes to projects.
11.0232 Application-Amendment or addition.	11.0267	Notice of review board action-Effective date.
11.0233 Application-Withdrawal.		

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- 11.0268 Revocation.
- 11.0269 Appeals board review-Complaints to board.
- 11.0270 Agency review-Appeals board or judicial remedy.
- 11.0271 Rulemaking-Applicability of provisions.
- 11.0272 Rulemaking-Notice of proposal.
- 11.0273 Rulemaking-Public hearing.
- 11.0274 Rulemaking-Distribution of proposals-Comments.
- 11.0275 Reports-Who must submit.
- 11.0276 Reports-Notice of requirement,
- Exhibit 1
- Exhibit 2
- Exhibit 3
- Exhibit 4
- Exhibit 5

Prior History: Rule 7-78, eff 31 Jul 78.

11.0201 Purpose.

The rules in this chapter are set forth for the purpose of interpreting and implementing 13.0106(5) and 13.02 A.S.C.A., the principal provisions of which confer responsibility upon the territorial health planning and development agency for making determinations of need for health facilities and services in the territory.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 1.

11.0202 Authority.

The rules codified in this chapter are promulgated under authority of 13.0204 A.S.C.A.

History: Rule 8-79, eff 16 Jul 29, Det. of Need Rules and Proc. § 2.

11.0203 Short title.

The rules set out in this chapter shall be known, and may be cited, as “American Samoa Determination of Need Rules and Procedures.”

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 3.

11.0204 Applicability.

The rules in this chapter shall govern determinations of need in every instance where, under 13.0102(5) A.S.C.A., the territorial health planning and development agency has jurisdiction to determine the

need for any health care facility or any part or service of any such facility.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 4.1.

11.0205 Certificate of need required when.

Under the provisions of 13.0205 A.S.C.A., no person or organization, public or private, in the territory of American Samoa may make a substantial change in any health care facility or the services offered therein unless the agency has determined that there is a need for such substantial capital expenditure or substantial change in service and has granted the applicant a certificate of need.

History: Rule 8-79; eff 16 Jul 79, Det. or Need Rules and Proc.

11.0206 Application submits to jurisdiction-Applicability rulings.

- (a) Notice is given that any person submitting an application for determination of need to the agency for filing shall be deemed, by virtue of such actions, to submit to the jurisdiction of the agency under this chapter.
- (b) Persons desiring a ruling as to the applicability of 13.0205 A.S.C.A., to any particular proposed capital expenditure or health service change are advised to request a ruling from the agency before submitting an application.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 4.3.

11.0207 Definitions.

The following words or phrases, as used in this chapter, shall have the following meanings unless the context otherwise requires:

- (a) “Action” means the issuance of written findings of need or lack of need for a project described in an application for determination of need, by the review board of the agency.
- (b) “Agency” means the territorial (state) health planning and development agency of the ASG.
- (c) “Appeals board” means the board appointed by the Governor to consider appeals from the rulings of the agency.

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- (d) “Applicant” means any person, organization, agency, or institution who applies to the agency for a certificate of need under the act.
- (e) “Certificate of need” means a written notification from the agency that the review board has determined that there is a public need for a proposed project as described in an application for certificate of need.
- (f) “construction” means the erection, building, alteration, reconstruction, improvements, renovation, extension, or modification of a health care facility, including its equipment, and the studies, designs, plans, working drawings, and specifications pertaining thereto, and any management or commitments for financing such construction.
- (g) “Council” means the American Samoa health coordinating council of PL 16-26.
- (h) “Determination of need” means a determination by the review board that the proposed health-care-facilities project or health-care-services change proposed by an applicant for a certificate of need is needed in the territory to further the purposes stated in 13.0101 A.S.C.A., utilizing the criteria adopted under 13.0209.1 A.S.C.A.
- (i) “Health care facility and health care service” means any program, institution, place, building, or agency, or portion thereof, including health maintenance organizations, private or public, used, operated, or designed to provide medical diagnosis, treatment, nursing, rehabilitative, or preventive care to any person or persons, whether preadmission, outpatient, inpatient or postdischarge care, including but not limited to nursing service, home care nursing, and other paramedical service; ambulance service; mental health and psychiatric service; service provided by an intern, residential training, or physician; laboratory service; medical social service; drugs; biological; supplies; appliances; and equipment.
- (j) “Review board” means the board established by the act for the purpose of reviewing applications for certificate of need under the requirements of 13.0205 A.S.C.A., and this chapter.
- (k) “Staff” means professional personnel of the territorial health planning and development agency.
- (l) “Substantial capital expenditure” means the expenditure of a sum of money for a health care facility or its equipment or predevelopment activities which exceeds, or may reasonably be regarded as leading to, an aggregate expenditure for construction in excess of \$100,000, or of \$50,000 for equipment only for an undertaking sufficiently specific to constitute the subject matter of an application for determination of need under the act.
- (m) “Substantial change in services” means an increase, decrease, or modification in the scope or type, rather than degree, of health services provided, including the addition of a service not previously provided within the 12-month period prior to the provision of the service; specifically, the increase or change in the class of usage of the bed complement of a health care facility, or the relocation from one facility to another, which involves 5 or more beds or 5% or more of the total bed complement, whichever is less.
- (n) “The act” means PL 16-26 (Chapters 13.01 and 13.02 A.S.C.A.):

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 5.

11.0208 Time period computation.

Any period of time specified in this chapter or otherwise in connection with the determination of need program shall include every calendar day, whether the offices of the agency are open on that day or not; except, that when the last day of the period falls on a day when the offices are closed, such period shall end instead on the next day on which the agency is open for business.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 6.

11.0209 Forms, applications, and procedures.

Any forms or application instruction or procedures prepared in accordance with this chapter shall be available upon request made in person or in writing to the director or assistant director of territorial health planning and development, L.B.J. Tropical Medical Center. Any revised forms or changes in procedures

shall be hand delivered by the agency staff to any person whose application is pending and is affected by the change.

History: Rule 8-79, 16 Jul 79, Det. of Need Rules and Proc. § 7.

11.0210. Communications between applicant and staff or review board.

- (a) Prior to the filing of an application, verbal and written communications between a potential applicant and the staff of the agency or members of the review board shall be freely permitted. All applicants are urged to discuss any proposed projects with the agency staff early in the planning stages of the project so that the applicant becomes thoroughly familiar with the goals, objectives; and priorities of the agency's plans and the procedures and criteria utilized in the determination-of-need review process.
- (b) During such time as an application for determination of need is before the agency, the applicant may make verbal or written inquiry of the staff concerning the status or progress of an application or for technical assistance in complying with these regulations. Other written communications are permitted to the staff or review board members if a copy of such communication is forwarded to the director of the agency and all review board members, if relevant to the review.
- (c) However, during such time as an application is before the agency for determination of need neither the applicant nor any employee or agent of the applicant shall initiate any oral communication with the director of the agency or any member of the review board to urge a particular outcome concerning such application except at a meeting where notes are kept for inclusion in the public file on the application.
- (d) Notice is given that when an applicant, either directly or through an employee or agent, makes a communication which is prohibited by this chapter or is otherwise clearly improper, the agency may dismiss the application.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 8.

11.0211 Public records on applications.

The agency, at its health planning office, shall maintain a file, open to public inspection which shall contain all records of a public matter concerning every application for a determination of need.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 9.1.

11.0212 Public records designated-Status appraisal and information providing.

- (a) Each of the following documents relating to an application for a determination of need shall be treated as a public record:
 - (1) A notice of intent;
 - (2) An application for determination of need;
 - (3) Any amendment to an application;
 - (4) Comments and recommendations of the review board or the applicant;
 - (5) Agency staff reports;
 - (6) Findings and action taken;
 - (7) Requests for appeal;
 - (8) Appeals board actions;
 - (9) Public comments; and
 - (10) Any other written communication of an official nature received by the agency in connection with an application.
- (b) The status of any agency review and the provided to any person subject to the provisions of the act and the public in general, upon request.

History: Rule 5-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 9.2.

11.0213 Enforcing agency appraisal.

The agency shall inform all agencies of government mentioned under 13.0206 A.S.C.A., (including the department of manpower resources) of their respective responsibilities in the enforcement of provisions of the act and this chapter.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 9.3.

11.0214 Annual reports.

The agency shall compile a report annually which shall describe any reviews being conducted and their status and shall list all reviews completed since the last published report and a general statement of the findings and decisions made in the course of these reviews. These reports shall be published and notification of their availability published in a local newspaper of general circulation.

History: Rule 8-79, eff Jul 79, Del. of Need Rules and Proc. § 9.4.

11.0215 ASHPDA-Duties.

The health planning and development agency has been specified as the agency to administer the territorial certificate of need program of PL 16-26 and shall assure that all applications for certificate of need are reviewed by its review board in an unbiased manner according to procedures and criteria contained in the act and this chapter.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 10.1.

11.0216 ASHPDA-Location-Address-Telephone number.

- (a) The agency is located in the administrative wing of the L.B.J. Tropical Medical Center in Faga'alu.
- (b) The address of the agency is State Health Planning and Development Agency, L.B.J. Tropical Medical Center, Pago Pago, American Samoa, 96799.
- (c) The agency telephone number is 633-4559.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 10.2.

11.0217 Review board-Composition-Chairman-Terms.

- (a) The review board members shall be appointed for a term of 3 years and shall include, but need not be limited to:
 - (1) the director of health planning and development (executive director of the council);
 - (2) the chairman of the council;

- (3) the chairman of the senate committee on public health;
- (4) the chairman of the house committee on medical services and public health; and
- (5) three other members of the council to be selected by the Governor. In making such selection the Governor may consider the recommendations of the agency.

- (b) No more than 3 members of the review board, including the director of health planning and development, may be employees of the department of health.
- (c) The director of health planning and development shall chair the review board.
- (d) The members of the review board other than those specified in subsection (b) shall serve 3-year terms but may be reappointed for additional terms at the discretion of the Governor. In the event that the chairman of either of the legislative committees mentioned in subsection (a) of this section or the chairman of the council is replaced in those positions by another appointed or elected official, they will continue to serve as members of the review board until any reviews of applications under consideration have been completed. Before the beginning of any new application reviews any such members shall be replaced on the review board by the new incumbents of those positions.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 10.3.1.

11.0218 Review board-Function-Procedure generally.

- (a) The review board is the body of the agency authorized to perform the determination-of-need function of 13.0205 A.S.C.A.
- (b) The function of the review board shall be to review applications for certificate of need. In reviewing such applications, the review board shall follow such procedures as are prescribed under 11.0250 of this code.
- (c) Following the review of each application the review board shall make a determination of the need or lack of need for the proposed project and

shall accordingly recommend approval, approval with conditions, or disapproval of each such application. In making such determination the review board shall consider criteria contained in 13.0205 A.S.C.A., and adopted under 13.0209.1 A.S.C.A., as appropriate, and any other criteria established by this chapter or amendments thereto, and also the staff analysis report of the agency, and any comments of the public in relation to the application.

- (d) The review board shall forward its findings to the director of health for official action within 30 days of the completion of its review.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 10.3.2.

11.0219 Staff activity restrictions.

The following conflict-of-interest provisions shall prevail concerning the conduct of review by the review board:

- (a) No staff member of the agency may develop any proposal to be reviewed under the review process described in this chapter nor act as representative of, nor on behalf of, the department of health in the submission or presentation of any application for certificate of need to be reviewed under this review process, nor in any other way abuse his special relationship with the review board concerning any application under review.
- (b) Staff may, however, voice their own opinions concerning an application in the presentation of any staff analysis during review of any application and may volunteer special information about such reviews which may assist the review board in reaching its own decision, and may provide technical assistance to the department of health to assist in the development of applications for federal projects.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 10.3.3.

11.0220 Notices of intent-Required-When filed.

Any person or organization intending to initiate a health facilities construction project or substantial change in institutional health services shall file a notice of intent with the agency at the office of territorial health planning and development no less

than 14 days prior to the submission of an application for determination of need. Potential applicants are urged to file such notices of intent early in the planning stages of any proposed projects so as to take fullest opportunity of the information and plans of the agency in developing such projects.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 11.1.

11.0221 Notice of intent-Title-Content.

- (a) Every notice of intent filed under 11.0220 shall be entitled “Notice of Intent for Health Facilities or Services Project” and shall contain at least the following information:
- (1) Name and address of person or organization giving notice;
 - (2) Location and brief description of proposed project, including type of facility involved, any change in services contemplated, target population to be served;
 - (3) Amount, type, and sources of financial to be sought; and
 - (4) Best estimate of total capital expenditure as necessary to complete the project.
- (b) Also to be included with the notice of intent are any requests for agency ruling as to the necessity for an application for determination of need, requests for technical assistance in preparing application for determination of need, or request for preapplication conference.
- (c) A notice of intent form shall be available from the agency upon request, but need not be used; provided, that the requirements of this section are met.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 11.2.

11.0222 Notice of intent-Acknowledgment-Providing forms and information-Response to requests..

Upon receipt of a notice of intent which meets the requirements of 11.0221, the agency shall, within 14 days, acknowledge receipt of such notice and its acceptability, in writing, to the person filing such notice and shall provide such forms and other information as is necessary to complete application at

that time. In addition, the agency shall make timely and appropriate response to any other requests mentioned in 11.0221.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 11.3.

11.0223 Technical assistance.

The agency shall provide technical assistance to applicants for determination of need upon request, within the limitations of agency capabilities and resources. Such technical assistance shall be in the nature of:

- (1) interpretation of determination of need procedures and criteria;
- (2) application instructions;
- (3) assistance in filing applications;
- (4) interpretation of agency plans, information, or sources of data, or provision of certain data; and
- (5) any other assistance which the agency considers to be proper and necessary to the filing of an acceptable application.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 12.

11.0224 Preapplication conferences.

The agency, at the request of an applicant for determination of need or upon its own initiative, may meet with an applicant to discuss an intended project and its relationship to the goals, objectives, and priorities established by the territorial health plan and annual implementation plans in effect at that time, or findings as to the need for new institutional health services, appropriateness of existing health services, and need for health facilities construction or alterations in the territory.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 13.

11.0225 Application-Required-Number of copies.

Every person, organization or government agency seeking a determination of need shall submit an application therefor, in an original and 3 copies, to the territorial health planning and development agency.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 14.1.

11.0226 Application-Standard and emergency.

An application shall be one of the following two types: standard review application or emergency review application. If during the course of any emergency review, the agency determines that the true nature of the project requires a standard review, the applicant shall be so notified and an application for standard review will be required of the applicant.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 14.2.

11.0227 Application-Emergency review justification.

The agency may accept an application for emergency review if it determines that an emergency situation exists requiring the project to prevent the occurrence of damage to, or further damage to, the public health or a health care facility.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 14.3.

11.0228 Application-Form-Content.

The agency shall develop and make available upon request, forms and applications, and abbreviated forms for emergency review applications. The forms shall include such instructions as are necessary to inform applicants of the information required to complete an acceptable application for determination of need. The information required may vary with the type of project. The agency shall inform the applicant of the information to be supplied with the application upon receipt of the notice of intent to apply. In general the information required in any application shall be sufficient in scope and depth to enable a termination of the degree of compatibility with the review criteria designated for reviewing such application. Every application shall contain a statement signed by the applicant that to the best of the applicant's knowledge the description of the project and the accompanying supportive information is an accurate representation of the true scope and nature of the project.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 15.1.

11.0229 Application-Evaluation-Requirement restrictions.

Upon receipt of an application for determination of need, the agency staff shall evaluate the application for acceptability according to the information

requirements prescribed and published for such application. The applicant shall be notified within 14 days of any deficiencies in the application. The agency may require no information which has not been prescribed and published.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 15.2.

11.0230 Application-Justification responsibility-Supporting evidence.

Every applicant shall be given notice that the responsibility for justifying the need for the proposed project lies with the applicant, not the agency staff or the review board. The applicant should submit with his application whatever additional evidence he wishes to place before the review board in support of his application.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 15.3.

11.0231 Application-Emergency form.

Instead of using the application forms referred to in 11.0228, any person or organization may, in an emergency situation described in 11.0227, make application for a determination of need by filing with the agency a letter stating tile identity of the applicant, the nature of the emergency, and the nature, scope, location, 2nd estimated cost of the project. Within the discretion of the agency, the applicant may subsequently be required to submit any or all of the usual application forms.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc.

11.0232 Application-Amendment or addition.

Any applicant may amend or submit additional supportive information for any application if submitted to the agency within 14 days after filing the application. If such amendment or additional information constitutes an increase in the maximum estimated capital expenditures for the project or substantially changes the nature, scope, or location of the project, the application must also be amended to reflect these changes.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 16.

11.0233 Application-Withdrawal.

Any applicant for determination of need may, at any time, by written notice to the agency, withdraw an application filed under this chapter.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 17.

11.0234 Public comment, notice, and document access.

The agency shall afford a reasonable opportunity for public comment on any standard review application for determination of need and shall consider any such comments received, before it acts on any such application. Reasonable opportunity for comment may include a public hearing and shall at a minimum include a public notice, in one or more local newspapers, of the beginning of the review of any application and the accessibility of the application to the public at the territorial health planning and development office for viewing or copying.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 18.1.

11.0235 Notice of beginning of review.

Written notification of the beginning of a review shall be hand delivered to the applicant. Such written notification and public notice of the beginning of a review shall include, at a minimum

- (1) notification of the proposed schedule for the review;
- (2) notification of the period within which a public hearing during the course of the review may be requested; and
- (3) notification of the manner in which notification will be provided of the time and place of any hearing so requested.

History: Rule 8.79, eff 16 Jul 79, Det. of Need Rules and Proc. 18.2.

11.0236 Public hearings-When ordered-Request deadline.

The agency shall order a public hearing on an application upon written request of the applicant or any bona fide resident of American Samoa or whenever, in its opinion, a public hearing would aid the staff or review board in carrying out their duties; provided, that such request for public hearing is filed with the agency within 20 days after the notification

of beginning of the review. The imposition of any fee for public hearings is prohibited.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. 19.1.

11.0237 Public hearings-For reconsideration of agency finding.

- (a) Any person may, for good cause shown request, in writing, a public hearing for purposes of reconsideration of a finding of the agency. Such requests must be received by the agency within 30 days of publication of the notice of the finding of the agency.
- (b) Good cause shall be deemed to have been shown by evidence which:
 - (1) presents significant, relevant information not previously considered by the agency;
 - (2) demonstrates that there have been significant changes in factors or circumstances relied upon by the agency in reaching its decision;
 - (3) demonstrates that the agency has materially failed to follow its adopted procedures in reaching its decision; or
 - (4) provides such other basis for a public hearing as the agency determines constitute good cause.
- (c) The findings of the agency after consideration of all comments at his hearing shall be the final decision of the agency, subject to provisions of 13.0211 A.S.C.A.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 19.2.

11.0238 Public hearings-Notice.

The agency shall send to the person requesting the hearing, the applicant, and others upon request, written notification of the time, place, and nature of any public hearing to be held under 11.0236 or 11.0237. Such notice shall also be published in at least one weekly newspaper in the territory at least 10 days before any such public hearing.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 19.3.

11.0239 Public hearings-When held-Place.

A public hearing ordered upon request under 11.0236 shall be held not more than 30 days after it is requested. A public hearing ordered by the agency may be held at any time. If feasible, every public hearing shall be held at a location sufficient in size to accommodate all interested persons.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 19.4.

11.0240 Public hearings-Conduct.

A designated representative of the agency shall be responsible for the conduct of any public hearing, including setting the permissible length of presentation, arranging the order of presentations, and serving as presiding officer. An opportunity shall be provided for any persons, who so wishes, to present testimony. Requests to speak shall be made to the presiding officer at the beginning of each public hearing and, if he permits, during the hearing.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 19.5.

11.0241 Public hearings-Summaries-Applicant comments-

Reconsideration findings.

- (a) The staff of the agency shall summarize the comments given at each public hearing; except, that a summary of the applicant's comments shall not be required. It shall be the duty of the applicant to file any comments he or she wishes to enter in the record in writing to the agency.
- (b) The agency shall provide written findings of any public hearing held under the provisions of 11.0237, including the basis for its decision, within 30 days after the conclusion of the hearing.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 19.6.

11.0242 Staff reports-Required when.

The agency staff shall prepare a written report on every application for determination of need; provided, that such staff report may be dispensed with in the case of emergency applications filed pursuant to 11.0227.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 201.

11.0243 Staff reports-Content.

The staff report on each standard application shall contain at least the following:

- (1) A description of the project applied for, with a summary of any supporting material filed by the applicant;
- (2) A summary of all comments filed in timely and proper manner by the applicant or a member of the public; and
- (3) Any additional material or staff analysis which the staff believes would aid the review board in its determination.

The full application and comments may be appended in lieu of a summary of same.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 20.2.

11.0244 Staff reports-Filing and distribution-Contents.

- (a) The staff report shall be placed in the public file on the application and copy sent to the applicant to file members of the review board at least 14 days before the board meeting to consider such application.
- (b) The applicant or any other affected person shall have the right to file written objections or other comments regarding the staff report; provided, that such comments are received by the agency at least 8 days prior to the review board meeting to consider such application. If the applicant's comments contain information not previously made available to the staff of the agency, the staff may recommend to the review board tabling of the application until there has been adequate time for further staff analysis.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 20.3:

11.0245 Advocacy by applicant.

An applicant for determination of need may seek to convince the review board of the appropriateness of taking favorable action on its application in the following ways:

- (1) by submitting material supporting its application under 11.0228, 11.0230, or 11.0232;

- (2) by requesting a public hearing under 11.0236 as a means of bringing to the review board's attention any public opinion favorable to approval of its application;
- (3) by filing written comments to the agency staff report under 11.0244; or
- (4) by making an oral presentation at the review board meeting at which its application is to be considered.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 21.

11.0246 Deadline for agency action and documentation-Failure to act.

The agency shall take final action and document such action in writing under 11.0257 through 11.0265 on every application for determination of need within 90 days after notification of the beginning of the review. A failure to take final action within 90 days of notification shall constitute a determination of lack of need for the project.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 22.1.

11.0247 Prerequisites for agency action.

Except in the case of an emergency application, the agency shall not act on an application under 11.0257 through 11.0265 unless:

- (1) the application and any amendments thereto have been on file with the agency at least 20 days after public notification of the filing of such application;
- (2) any public hearing requested by the applicant or any other bona fide resident of the territory of American Samoa has been held; and
- (3) appropriate opportunity to comment on such application has been afforded the public.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 22.2.

11.0248 Review board meetings-Announcement and public nature-Presiding officer.

The review board shall meet upon the call of the chairman. Meetings shall be announced at least 7 days in advance and shall be open to the public and the

press. The chairman or his designee shall preside at every meeting of the review board. When a designee of the chairman presides in the chairman's absence, he shall have all the powers and duties of the chairman under this chapter.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 23.1.

11.0249 Review board meetings-Notice and transmittal of material to members.

Notice of any meeting of the review board shall be transmitted to each member of the board at least 7 days prior to each meeting, together with a copy of the staff report on the application to be considered, if any, and any comments on the application or staff report from the applicant or a member of the public, and any other such material as the agency deems relevant.

History: Rule 8-79, eff 16 Jul 79, Oct. of Need Rules and Proc. § 23.2.

11.0250 Review procedure.

Any standard review of an application for determination of need by the review board shall be conducted in accordance with the following procedures:

- (a) Staff Presentation. Unless the chairman directs otherwise, consideration shall begin with an oral presentation by the agency staff.
- (b) Applicant and Public Presentations. The applicant and/or any member of the public present shall then be entitled to make an oral presentation of not greater than 10 minutes. If the applicant presents any new evidence or supportive material deemed by the chairman to be significantly different than that submitted with the application or any amendment thereto, the application may be dismissed by the review board upon majority vote of the board.
- (c) Questioning and Discussion. Upon completion of all presentation, the review board may question the applicant or the staff for further clarification of the content of the application or the staff analysis report. Following the questioning of the applicant and the agency staff, the applicant may be excused from the meeting prior to discussion of the merits of the project.

- (d) Findings and Action. Concluding such discussion and consideration of the application, the review board should make such finding and take such action as it seems appropriate, by motion duly made and seconded and voted, and shall prepare a statement of such action and the reasons therefor. Such statement, when signed by the chairman, shall constitute official record of the action of the agency concerning the review for determination of need or lack of need for the project described in the application.

History: Rule 8-79, eff 16 Jul 79, Oct. of Need Rules and Proc. § 23.3.

11.0251 Official record of review board action.

Following every meeting at which the review board acts upon an application, the chairman shall cause such action and the reasons there for in the case of final action, to be reduced to a written statement. The chairman may, within his discretion, consult with members of the review board voting for an action in order to confirm that such statement is in accordance with their views, or may place such statement before the review board for ratification. Such statement, when signed by the chairman, shall constitute official record of any action taken at the review board meeting and shall be included in or appended to the minutes of such meeting.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 23.4.

11.0252 Preliminary action-Permitted-Procedure.

The review board, upon consideration of an application on its agenda, may, when it considers final action inappropriate, by motion duly made, seconded, and voted, take preliminary action thereon.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 24.1.

11.0253 Preliminary action-Alternatives.

As preliminary action upon an application, the review board may:

- (1) notify the applicant and all other participants in the proceeding of its intent to resume consideration of the application at a subsequent meeting:

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- (2) direct the staff to conduct further review of the application in the manner directed, and to report in writing to the review board within a specified period;
- (3) request a public hearing with respect to the application on such subjects and within such period as the review Board may specify;
- (4) request additional supporting documentation from the applicant, to be submitted on such subjects and within such period as the review board may specify,
- (5) consult with the applicant concerning his willingness to submit an amendment to his application; or
- (6) take such other action as, in the opinion of the review board, will facilitate final action on the application.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 24.2.

11.0254 Dismissal-Permitted.

The review board, upon consideration of an application on its agenda, may, by motion duly made, seconded, and vetoed, dismiss such application without making a determination of need or lack of need.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 25.1.

11.0255 Dismissal-Grounds.

No application shall be dismissed except on one of the following grounds:

- (1) The applicant has failed to file a notice of intent to apply;
- (2) The applicant had made an improper communication to any review board member or staff member, as under 11.0210, or has sought to exert undue influence on any such person or upon any person testifying at a public hearing to comment on an application for determination of need;
- (3) The applicant has made a false statement or misrepresented a material fact in any oral or written communication to the review board in connection with his application; or

- (4) The applicant has otherwise failed substantially or repeatedly to comply with the provisions of these regulations.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 25.2.

11.0256 Dismissal-Procedures.

The review board may dismiss such application with or without prejudice to submission of a new application, as it deems appropriate. Every dismissal shall be reduced to writing and shall set forth the reasons therefor.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. §25.3.

11.0257 Final determination deadline.

Within 90 days of the filing of a standard review application for determination of need unless such application is not acceptable under the requirements of 11.0228 through 11.0231, or is sooner dismissed (see 11.0254, 11.0255, and 11. 0256), the review board shall, by motion duly made, seconded, and voted, make a final determination of need or lack of need.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 26.1.

11.0258 Objective in determination.

In making determinations of need, the review board shall have as its objective the appropriate allocation of ASG and federal health care resources and the development of improved systems of delivering health care services so that adequate health care services will be reasonably accessible to every person in the territory at the lowest reasonable aggregate cost. No project described in any application shall be determined to be needed which is not consistent with this objective.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 26.2.

11.0259 Findings required.

- (a) In taking final action under this chapter, the review board shall not make a determination of need on any application for proposed new institutional health services or facilities for inpatients unless it first makes each of the following findings in writing (such findings shall include the basis for the findings and shall be

sent by mail to the applicant and made available to the public upon request):

- (1) That less costly, more efficient, or more appropriate alternatives to such proposed inpatient services are not available and the development of such alternatives has been studied and found not practicable;
- (2) That in the case of new construction, alternatives to new construction; e.g., modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable;
- (3) That patients will experience serious problems, in terms of cost, availability, or accessibility or other such problems as may be identified by the agency, in obtaining inpatient services of the type proposed in the absence of the proposed new services.

(b) The review board must also make the following written findings before a determination of need for such proposed inpatient services may be made:

- (1) The efficiency and appropriateness of the use of existing ill patient facilities providing inpatient services similar to those proposed; and
- (2) The capital and operating costs (and the potential impact on patient charges), efficiency, and appropriateness of the proposed new inpatient service.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 26.3.

11.0260 Determination criteria-Consideration.

- (a) In addition to the mandatory findings required by 11.0259, the review board shall consider such of the criteria set forth in 11.0261, 11.0262, and 11.0263 as it deems relevant to making an appropriate determination of need on a particular application.
- (b) A finding adverse to an applicant regarding any of the criteria under 11.0261, 11.0262, and 11.0263 relevant to a particular application may be sufficient to constitute grounds for a

determination of lack of need. An adverse ruling on an individual criterion, however, is not in itself necessarily grounds for a determination of lack of need. The applicant may be able to show that the proposed project merits a determination of need on consideration of all relevant criteria even though it does not meet each individual criteria considered.

History: Rule 8-79, eff 16 Jul 79. Det. of Need Rules and Proc. § 26.4 (part).

11.0261 Determination criteria-Services and equipment.

Criteria for determining need for health care services and equipment:

- (1) Targeting to Needs. The proposed service (equipment) is aimed at a specific unmet or inadequately met community health need;
- (2) Benefit Potential. The proposed service (equipment) has potential for improving health status or health care delivery;
- (3) Plans Conformance. The proposed service conforms to the goals, objectives, priorities, and recommendations of the territorial health plan and the annual implementation plan of the agency, and supports other overall or long-range plans of the territory (including the Territorial Medical Facilities Plan and any long range development plans of the applicant);
- (4) Alternatives. The availability of less costly or more effective alternative means of meeting the need.;
- (5) Utilization Pattern Effects. Relationships of the proposed service to existing or desired patterns of health services utilization;
- (6) Ancillary and Support Services. The relationship of the proposed health services to ancillary or support services;
- (7) Implementation Resources. The availability of adequate resources (including facilities, manpower, and finances) to successfully implement the proposed service (utilize the equipment) initially and during the duration of need, and the potential for alternative uses of

such resources for the provision of other health services.

- (8) Cost Feasibility and Justification. The immediate and long-term costs associated with the proposed service (equipment), including secondary costs of the effect on existing services or facilities, are feasible and justified by the expected benefits and/or utilization of the service (equipment).
- (9) Controls. The proposed service includes provisions for monitoring, measuring the impact, or assuring the quality of the service.
- (10) Location. The accessibility and appropriateness of the proposed service location.

History: Rule 8-79, eff 16 Jul 79. Det. of Need Rules and Proc.

11.0262 Determination criteria-new facilities for new services.

Criteria for determining need for new health care facilities to house new services:

- (1) Service Need. The service to be housed by the facility has been determined to be needed according to 11.0261;
- (2) Plan Conformance. Conformance of the proposed facility with the Territorial Medical Facilities Plan;
- (3) Alternatives. Availability of alternative facilities;
- (4) Location. Appropriateness of the proposed facility location;
- (5) Long-term Funding. Ability to fund developmental, operational, and maintenance costs over the projected useful life of the proposed facility;
- (6) Utilization Effects. Effect on utilization of existing facilities and patterns of service;
- (7) Utilities and Energy Use. Assurance of adequate utility supply and consideration of the costs and method of energy provision and impact on energy consumption;
- (8) Costs, Construction Methods, and Cost Impact. The costs and construction methods of the

proposed facility and the probable impact of the project on the costs of providing health services by the organization proposing such project;

- (9) Adequacy of Resources for Use. The proposed facility can be adequately staffed, equipped, and operated when completed;
- (10) Cost Containment and Quality Improvement. The proposed facility will foster cost containment or improved quality of care through improved efficiency and productivity, including promotion of cost-effective factors such as ambulatory care or design and construction economies.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 26.4 (2).

11.0263 Determination criteria-New facilities for existing services.

Criteria for determining need for new facilities to house existing health services:

- (1) Other New Facilities Criteria. Criteria set forth in 11.0262; and
- (2) Unsuitability to Needs and Alternatives to Construction. Existing physical facility is unsuited for the service needs-feasibility of renovation, alterations, additions, modifications, expansion, etc.
- (3) Location Unsuitability. Existing facility location is unsuited to services needs.
- (4) Standards Compliance. Need to bring existing facility into compliance with certification, licensure, safety, or other code requirements feasibility of alterations to meet standards, and need to meet standards.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 26.4 (3).

11.0264 Applicant demonstration of need-Determination data resources.

- (a) The sole responsibility for demonstrating the need for any proposed project of an application for determination of need shall lie with the applicant.
- (b) In making determinations under this chapter, the review board shall rely upon such vital statistics

and other demographic data, such resource inventories, and such utilization and other health care studies and plans as it deems appropriate and useful. Any such material relied upon by the review board in making determinations of need shall be kept by the agency and shall be subject to inspection and copying by any person upon request.

History: Rule 8-79, eff 16 Jul 79, Del. of Need Rules and Proc. § 26.5.

11.0265 Issuance of certificate-Director action contrary to board.

- (a) The agency director, acting on all findings of the review board shall issue a certificate of need to each applicant where application has received a positive determination of need by the review board. No certificate of need is be issued unless the review board has determined that there is a need for the project according to the procedures and criteria contained in 11.0205 (1) or adopted under 11.0209.1 A.S.C.A., and this chapter.
- (b) The agency director may act contrary to appeal the decision of the review board only if he can show reasonable evidence that the review board has:
 - (1) overlooked or ignored important evidence before it in reaching its decision;
 - (2) failed to follow appropriate procedures prescribed in this chapter;
 - (3) acted without regard for a conflict of interest situation; or
 - (4) received improper verbal communications during the course of the review.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 26.6.

11.0266 Term of determination-Changes to projects.

Determinations of need and certification thereof shall be valid for 1 year. The review board, for good cause shown and not otherwise, may, in writing, grant an extension of the period of validity. Such determinations of need shall be valid only for the scope of the project for which made and only for the estimated range of capital expenditures approved. Any proposed changes to a project given a

determination of need which exceeds 10% of the original estimated project costs shall require review and approval of the review board unless such change order exceeds \$100,000, or \$50,000 for equipment only, in which case the proposed change shall require a standard review application and a determination of need just as if such proposed change was a new project.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 27.

11.0267 Notice of review board action-Effective date.

- (a) Whenever the review board takes preliminary or final action upon an application for determination of need, it shall be the responsibility of the chairman to send appropriate notice in writing to the applicant and the council. In the case of final action taken, such notice shall also be published in a territorial newspaper of general distribution.
- (b) Such notice shall, in every instance, set forth the final action taken and the reasons therefor, and the rights and duties of each person or agency notified with respect to the action. The chairman shall endeavor to send notice within 7 days of final action but in no event shall more than 30 days be allowed for such purpose.
- (c) Unless otherwise stated therein, a determination shall not take effect until notice thereof is received by the affected applicant.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 28.

11.0268 Revocation.

- (a) The review board is authorized to revoke a determination of need for failure of an applicant to comply with all terms and conditions of the determination of need established in accordance with 11.0266. If the chairman of the review board has reason to believe that a determination of need should be revoked:
 - (1) he shall make whatever preliminary inquiry of the holder of the certificate of need he deems appropriate in the situation in order to clarify whether a term or condition has not been complied with and whether such a failure to Comply is justifiable:

- (2) if no satisfactory explanation is forthcoming, he shall cause the matter to be placed on the agenda of a review board meeting for its consideration;
- (3) he shall notify the applicant of his intended action and shall specify the reasons therefor and indicate that the holder will be afforded an opportunity to address the review board concerning its action;
- (4) at the relevant meeting, the review board shall afford the holder and other affected persons an opportunity to speak, and is authorized to take such action as it deems fair and appropriate in the situation.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 29.

11.0269 Appeals board review-Complaints to board.

- (a) Any determination of need or lack of need made pursuant to the act and this chapter is subject to review by the appeals board established by the act in the manner and under the terms set forth in 13.0211 and 13.0212 A.S.C.A.
- (b) Any appeal must be made to the appeals board within 30 days of the final determination of the review board. The appeals board shall act on any appeal before it within 30 days of receipt of such appeal. Proceedings before the board are governed by rules of procedure adopted by the board and available at the Governor’s office. The agency advises every applicant, the council, and the public, that whenever such person, agency, or group is not satisfied with an action of the review board or the agency during the pendency of an application, it should make its objection in writing to the chairman of the review board; otherwise, upon appeal, the review board will argue that complaint on such ground has been waived by the complainant’s failure to raise its objection with the review board and to allow the review board opportunity to respond thereto. Communication to the review board regarding any such complaint shall be directed to its Chairman, Health Planning and Development Office, LBJ Tropical Medical Center, Pago Pago, American Samoa 96799.

- (c) The decision of the appeals board must be made in writing and sent to the agency and the applicant, and made available to others upon request, within 60 days of the date of filing of any appeal.
- (d) When a decision made by the appeal board is determined to be inconsistent with the goals and priorities of the territorial health plan or annual implementation plan, the appeals board shall submit to the agency and the Governor a detailed statement of the reasons for the inconsistency.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc § 30.1.

11.0270 Agency review-Appeals board or judicial remedy.

Any applicant for determination of need aggrieved by the action of the review board in denying acceptance of an application or by dismissal of an application, or by a determination of lack of need upon an application, may be afforded an opportunity for administrative review within the agency upon written request filed with the director of health planning and development, LBJ Tropical Medical Center, within 30 days of notification of such action, such dismissal, or such determination. An aggrieved applicant may, at its election, dispense with such review within the agency and seek appeal with the appeals board or whatever judicial remedy may be available.

- (a) Upon a timely request for agency review of the action of the review board in refusing to accept or revoking acceptance of an application or an amendment, or of a determination of need or lack of need, the director of health planning and development is authorized to assign an attorney, employed by the agency and not otherwise involved in the determination of-need program, to review such action for legal error and to report thereon to the agency. Upon consideration of such report, the agency shall reverse or modify the action complained of if it concludes such action was an abuse of the discretion committed to the review board, in violation of lawful procedures, or otherwise not in accordance with applicable provisions of law.
- (b) If the final decision of the agency is to reverse the determination, the application shall be

reinstated and a new determination shall be made.

History: Rule 8-7-9, eff 16 Jul 79. Det. of Need Rules and Proc. 30.2.

11.0271 Rulemaking-Applicability of provisions.

This section through 11.0274 govern the procedure to be used to adopt, amend, or repeal agency rules.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 31.1.

11.0272 Rulemaking-Notice of proposal.

When upon its own initiative the agency proposes to adopt, amend, or repeal a rule, a notice of proposed rulemaking will be published, in a territorial newspaper of general circulation stating that new/revised procedures and/or criteria have been proposed for adoption and that these proposed procedures are available at the agency offices for inspection and/or copying.

History: Rule 8-79, eff 16 Jul 7, Det. of Need Rules and Proc. § 31.2.

11.0273 Rulemaking-Public hearing.

- (a) Requirement. A public hearing will be held for all proposed issuance, amendment, or repeal of rules initiated by the agency.
- (b) Presiding Officer and Conduct. Each such hearing will be conducted by the director of health planning and development or an authorized representative. The hearing will be conducted in such a way as to afford interested persons a reasonable opportunity to be heard on matters relevant to the issues involved and to obtain a clear and orderly record.
- (c) Continuance of Hearing. Each such hearing will be held at the time and place set in the notice of hearing but may at such time and place be continued from day to day or adjourned to a later date or a different place without notice other than the announcement thereof at the hearing.
- (d) Order of Business. At the commencement of the hearing the presiding officer will read the notice of hearing and will then outline briefly the procedure to be followed. Testimony will then be received with respect to the matters specified in

the notice of hearing, in such order as the presiding officer prescribes.

- (e) Submission of Testimony. All interested persons will be given reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. Every witness will, before proceeding to testify, state his name, address, and whom he represents at the hearing. The presiding officer shall confine the testimony to the issue before the hearing.
- (f) Oral and Written Presentation. All interested persons or agencies of the territory will be afforded an opportunity to submit data, reviews, or arguments which are relevant to the issues, orally or in writing. Written testimony should be submitted to the agency at its office 24 hours or more prior to the hearing. Persons submitting written testimony on the day of the hearing must furnish 10 copies of such testimony to the agency staff prior to the hearing. In addition, or in lieu thereof, persons or agencies may also file with the agency, within 7 days following the close of the public hearing, a written protest or other comments or recommendations in support of or in opposition to the proposed rulemaking. The period for filing written protests, comments, or recommendations may be extended by the presiding officer for good cause.
- (g) Transcript. Unless otherwise specifically ordered by the presiding officer, testimony given at the hearing will not be reported verbatim. All supporting written statements, maps, charts, tabulations, or similar data offered at the hearing, and which are deemed by the presiding officer to be authentic and relevant, will be received and made a part of the record. Unless the presiding officer finds that the furnishing of the copies is impracticable, 2 copies of the exhibits will be submitted.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 31.3.

11.0274 Rulemaking-Distribution of proposals-Comments.

- (a) Copies of the proposed rules will be sent all territory-wide health agencies and organizations and to the council at the time of notice of public hearing. Comments will be received in writing

by the agency for 7 days following the conclusion of the public hearing.

- (b) Copies of the adopted or revised rules will be distributed to all territory-wide health agencies, the council, the enforcing agencies mentioned in 11.0206 A.S.C.A., the appeals board, the Governor, the Legislature, the Secretary of HHS, and others upon request.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 31.4.

11.0275 Reports-Who must submit.

- (a) All providers of health services, and other persons or organizations subject to the provisions of 13.0205 (a) A.S.C.A., shall submit to the agency periodic written reports respecting the development of projects or services subject to review.
- (b) Such reports shall be submitted at such times, in such form, and contain such information as required by the agency.

History: Rule 8-79, eff 16 Jul 79, Oct. of Need Rules and Proc. § 32.1.

11.0276 Reports Notice of requirement.

The agency will inform all persons or organizations under 11.0275 of the requirement for submission of periodic reports initially, and will send reminders to each 1 month before such reports are due.

History: Rule 8-79, eff 16 Jul 79, Det. of Need Rules and Proc. § 32.2.

EXHIBIT 1

STANDARD CATEGORIES OF HEALTH CARE SERVICES

The initiation or implementation of any of the specified health care services, as shown below, which have not been previously provided by the health care facility will require a certificate of need.

- (a) Bed-related.

- (1)(A) Medicine:

Allergy
Anesthesiology
Dermatology
Endocrinology
Gastroenterology

Cardiac care (Non CCU)
Physical and Medical evaluation
Family practice
Internal medicine
Pulmonary function and inhalation therapy
Geriatric
Urology
Eye, ear, nose, throat
Neurology.

- (B) Surgery:

General
Ophthalmology
Thoracic
Otorhinolaryngology
Proctology
Orthopedic
Urology
Cystoscopy
Oral
Plastic
Neuro.

- (2) Obstetrics, gynecology.
(3) Pediatric.
(4) Intensive care (ICU), including neonatal intensive care unit.
(5) Cardiac care (CCU).
(6) Psychiatric:
Partial hospitalization program
Psychological evaluation
Shock therapy.
(7) Long-term care.
(8) Sheltered care (skilled nursing care, convalescent care).

- (b) Nonbed-related.

- (1) Outpatient and clinic services:
Allergy
Arthritis
Cardio-vascular
Cystic fibrosis
Dermatology
Diabetes
Endocrinology
Eye, ear, nose, throat
Family planning
Genito-urinary
Glaucoma
Gynecology
Hypertension
Inoculation
Medical

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- Mental health
- Muscular dystrophy
- Neurology
- Obstetrics
- Parasitology
- Pediatrics
- Podiatry
- Psychiatric
- Sickle cell anemia
- Speech
- Hearing
- Surgery
- Thoracic
- Tuberculosis
- Tumor/Cancer
- Venereal disease
- Diagnostic and preventive medicine
- Private ambulatory service
- Home care program
- Outreach clinic
- Ambulance service affiliated with a health care facility
- (2) Emergency room services.
- (3) Diagnostic radiology:
 - Diagnostic X-ray
 - Cinefluorography
 - Ventriculography
 - Angia-cardiology.
- (4) Computerized axial tomography.
- (5) Nuclear medicine.
- (6) Laboratory services:
 - Microbiology
 - Clinical chemistry
 - Serology
 - Hematology
 - Pathology
 - Histopathology
 - Autopsy
 - Basal-metabolism.
- (7) Physical medicine:
 - Physical therapy
 - Occupational therapy
 - Speech therapy
 - Recreational therapy
 - Audiology
 - Prosthetics, brace fitting.
- (8) Dentistry:
 - Oral surgery
 - Operative/Restorative dentistry
 - Erdodontia
 - Prostodontia
 - Periodontia
 - Orthodontia
- (9) Vocational services.
- (10) Home health agency.
- (11) Drug rehabilitation.
- (12) Alcohol rehabilitation.
- (13) Freestanding health screening centers.
- (c) Special services:
 - (1) Renal dialysis.
 - (2) Cardiac catheterization.
 - (3) Bum center.
 - (4) Neurosurgery.
 - (5) Open heart surgery.
 - (6) Organ transplant.
 - (7) Therapeutic radiation:
 - X-ray therapy
 - Orthovoltage X-ray therapy
 - Megavoltage X-ray therapy
 - Gamma beam therapy
 - Radium therapy.
 - (8) Organ bank.
 - (9) Blood bank.
 - (10) Neonatal intensive care.
 - (11) Health maintenance organizations.
 - (12) Hemdphilia services.

- EXHIBIT 2*
EXAMPLES OF MAJOR MOVABLE EQUIPMENT
- Air conditioners.
 - Analyzers, gas.
 - Ambulance.
 - Anesthesia units.
 - Audiometers.
 - Auto-analyzers.
 - Autoclaves.
 - Automobiles, delivery.
 - Automobiles, passengers.
 - Bain manes.
 - Balances.
 - Basal metabolism units.
 - Bassinets, heated.
 - Baths, paraffin.
 - Beds, electric. Beds, manual.
 - Biochemical analysis units, micro.
 - Blood processing units.
 - Breathing units, positive pressure.
 - Broilers.
 - Buffer, electric.

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Cardiographs.
Cardioscooes.
Carts, food tray, heat-refrig.
Centrifuges.
Chloridometer-titrators, automatic.
Chromatographs, gas. Cobalt, radioactive.
Coldpack units, floor.
Colorimeters. Croupettes.
Difibrillators.
Dental treatment units.
Diather-ray units.
Disinfect ors.
Distilling apparatus.
Drills, press.
Drying ovens, paint shop.
Electrocard iographs.
Electrocephalographs.
Electrophoresis units.
Electrosurgical units.
Examining tables, metal and wood.
Fluoroscopes.
Frames, turning.
Fumaces, laboratory.
1-ugh frequency apparatus with diathermy.
Homogenizers.
Hydrocollators, floor.
Illuminator units, multiFilm.
Incubators.
Incubators, laboratory.
Kilns.
Kymographs.
Lamps, deep therapy.
Lamps, emergency.
Lamps, infrared.
Lamps, mercury quartz.
Lights, examining.
Lights, portable emergency.
Microfilm units. Microscopes.
Microprojectors.
Ovens, paraffin.
Ovens, sterilizing. Oxygen tents, motors, and trucks.
pH meters.
Photometers.
Photrometers.
Pulmotors.
Pumps, vacuum and pressure.
Radiation counters.
Radiographic-fluoroscopic combination.
Respirators.
Resuscitators.

Rinsers, sonic.
Scanners, isotope.
Scintillation scalers.
Seriographs, automatic.
Serological baths.
Shaking machines.
Sharpeners, microtome knife.
Shears, squaring floor.
Spectrometers.
Spectrophometers.
Sterilizer, movable.
Suction pump.
Tables, autopsy.
Tables, metal and wood.
Tables, obstetrical.
Tables, operating.
Tables, therapy. Tanks, paraffin.
Tents, oxygen.
Tissue processors.
Ultraviolet units.
Vibrators.
Volumetric blood gas apparatus.
Wheelchairs.
X-ray film driers.
X-ray film processors.
X-ray machines, deep therapy.
X-ray machines, mobile.
X-ray machines, superficial therapy.

EXHIBIT 3

EXAMPLES OF FIXED EQUIPMENT

(a) Building Services Equipment:
Electric lighting and power feed wiring:
Conduit and wiring
Fixtures Transformers Switch gear.
Central television antenna systems.
Clock systems.
Communications.
Heating, ventilating, and air conditioning systems:
Air conditioning systems: (all equipment and units)
Large-over 20 tons
Medium-5 to 15 tons
Small-under 5 tons
Boilers
Compressors, air, under 5 HP.
Compressors, air, 7-1/2 HP and over
Condensate tanks
Condensers
Controls

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Coolers and dehumidifiers
 Cooling towers
 Cooling towers
 Wood
 Metal
 Ductwork
 Fans, air-handling and ventilating
 Filters
 Furnaces, domestic-type
 Incinerator, indoor
 Oil storage tanks
 Piping
 Precipitators
 Pumps
 Radiators, cast-iron Radiators, finned-tube
 Unitheaters.
 Nurse call systems.
 Piping, oxygen, gas, air.
 Paging systems.
 Plumbing, composite:
 Fixtures
 Piping
 Pumps Water heaters
 Water storage tanks.
 Sprinkler and fire protection systems:
 Fire alarm systems
 Fire pumps
 Sprinkler system
 Tanks and towers. Sewerage, composite:
 Piping
 Sump pumps and sewerage ejectors. Telephone
 systems.
 Vacuum cleaning systems.
 (b) Other Fixed Equipment.
 Built-in benches, bins, cabinets, counters, shelving.
 Conveying systems.
 Generator sets.
 Hoods, fume.
 Sinks and drainboards.
 Sterilizers (built-in).

EXHIBIT 4

AMERICAN SAMOA HEALTH PLANNING AND
 DEVELOPMENT AGENCY L.B.J. TROPICAL
 MEDICAL CENTER FAGA‘ALU

DETERMINATION OF NEED FORM 100

A. This form is being submitted for
 _____ Application for determination of need

_____ Notice of Intent for Health Facility or
 services Project

B. Name of Facility or Organization

C. Project Contact:

Name _____

Phone _____

Address _____

D. Type of Project E. Type of Facility Cost _____

(check all applicable) F. Estimated

_____ New Facility _____ Hospital Funds
 G. Source of

_____ Expansion of Facility _____

Skilled Nursing (amounts)

_____ Renovation of Facility

Intermediate Care Federal _____

_____ Equipment Only

Home Health Agency ASG _____

_____ Addition of Beds Kidney Disease

Center Treatment

_____ Change in Bed Classification

HMO _____

_____ Addition of Service

_____ Ambulatory Health Care H. Expected

Date of

Facility

Obligation of Funds

Deletion of Service _____

Other, specify

I. Number of beds (if any) to be affected by the
 project:

added, _____ removed _____ changed
 from _____ to _____
 type type

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J. Description of change in services offered:

K. Estimated Project Completion Date: Month

Year _____

L. Summary Description of the Project and the Need it is Intended to

Fill (attach separate sheet if needed)

M. Type of Review Request (see Procedure Manual, Determination of

Need Rules)

_____Standard

_____Emergency

(Explain on an attachment your justification for an emergency review.)

N. Assurance:

To the best of my knowledge the above description of the proposed project and the accompanying supportive information is an accurate representation of the true nature and scope of the project.

SIGNATURE _____

DATE _____

and conditions upon determinations of need described in Part 27 of the Determination of Need Rules).

DIRECTOR OF HEALTH PLANNING AND DEVELOPMENT AGENCY

[End of Title 11 – Chapter 2]

EXHIBIT 5

CERTIFICATE OF NEED FOR HEALTH SERVICES, FACILITIES, OR EQUIPMENT

Notification is hereby given that the Review Board, of the Territorial Health Planning Agency of American Samoa, acting under the authority invested in it by P.L. 15-66 and the rules promulgated by the Agency for implementing said law, after due consideration of the information provided by the

_____, other interested parties, and the public-at-large, has determined that the proposed project entitled

_____of

the _____

_____is needed in the Territory.

You are hereby authorized to take the necessary steps to implement the above project. (Please note the terms

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TITLE 11 – CHAPTER 03 – MEDICAL TREATMENT

Sections:

- I. LBJ TROPICAL MEDICAL CENTER*
- 11.0301 Uninsured hospital and medical charges-Authority.
- 11.0302 Uninsured hospital and medical charges-Designated.
- 11.0303 Insured hospital and medical charges-Authority.
- 11.0304 Insured hospital and medical charges-Designated.
- II. OFF-ISLAND*
- 11.0310 Restriction to unavailable services.
- 11.0311 Qualifications-Insurance and other coverage.
- 11.0312 Authorization and processing.
- 11.0313 Transportation from airport to hospital-Ambulance.
- 11.0314 Travel Transportation from airport to hospital-Directness of
- 11.0315 Medical attendants-Children’s parents or guardians.
- 11.0316 Care without referral.
- 11.0317 Center. Applicability of provisions to Letterman Army Medical
- 11.0318 Care in private institution.

I. LBJ TROPICAL MEDICAL CENTER
11.0301 Uninsured hospital and medical charges-Authority.

The rule codified in this section and 11.0302 A.S.A.C., is adopted under authority of 13.0601 and 13.0602 ASCA.

History: Rule 5-81. eff 26 May 81. (part); repealed and replaced by Rule 1-83. eff 17 Aug 83, § 1 and 2 (part); repealed and replaced by Rule 1-84. eff 16 Feb 84, § 1 and 2 (part).

11.0302 Uninsured hospital and medical charges-Designated.

(a) Charges for patients for hospital and medical services not covered by insurance who are entitled to medical attention free of charge under 13.0601 A.S.C.A., are as follows:

- (1) A charge of \$7.50 per inpatient day for the use of facilities at the LBJ Tropical Medical Center; and

- (2) A charge of \$2 per outpatient visit for the use of facilities at the LBJ Tropical Medical Center and Government dispensaries.

Any person who may be entitled to free treatment pursuant to Section 13.0601 A.S.C.A., must present proof that he or she has resided in American Samoa for at least six months prior to the date that treatment is sought.

- (b) Charges for patients for hospital and medical services not covered by insurance who are not entitled to medical attention free of charge under 13.0601 A.S.C.A., are as follows:

- (1) An all-inclusive charge of \$60 per inpatient day for use of facilities and medical services at the LBJ Tropical Medical Center; and
- (2) A charge of \$2 per outpatient visit for the use of facilities at the LBJ Tropical Medical Center and Government dispensaries and a charge of cost plus 25% or \$1 whichever is greater, for each drug or medicine obtained at such visit, whether prescribed by a physician or medical officer or nonprescription in nature.

These charges shall be waived for United States citizens, their spouses and dependent children who present proof of residence in American Samoa for at least six months prior to the date that treatment is sought. Such persons shall pay the charges established in subsection (a) above.

- (c) For purposes of this rule, “Insurance” means health, accident, motor vehicle liability, workmen’s compensation and other insurance coverage of hospital and medical charges and coverage of such charges authorized or permitted by law in place of insurance.

History: Rule 5-81 eff 26 May 81. (part); repealed and replaced by Rule 15-83. eff 17 Aug 83. § 2 (part) and 3; repealed and replaced by Rule 1-84. eff 16 Feb 84, § 2 (part) and 3.

11.0303 Insured hospital and medical charges-Authority.

The rule codified in this section and 11.0304 A.S.A.C., is adopted under authority of Article V,

Section 6 of the Revised Constitution of American Samoa.

History: Rule 4-82, eff 13 June 82, 1; and Rule 4-83, eff 25 Apr 83, § t.

11.0304 Insured hospital and medical charges- Designated.

- (a) Charges for patients at the LBJ Tropical Medical Center for hospital and medical services covered by insurance or payable under health care programs of the United States Government applicable to American Samoa are as follows:
- (1) An all-inclusive charge of \$201.00 per inpatient day for hospital and medical services; and
 - (2) An all-inclusive charge of \$17.80 per outpatient visit for hospital, clinic and medical services.
- (b) For purposes of this section, “insurance” means health, accident, motor vehicle liability, workmen’s compensation and other insurance coverage of hospital and medical charges and coverage of such charges authorized or permitted by law in place of insurance.

History: Rule 4-82, eff 13 June 82, § 2; and Rule 4-83, eff 25 Apr 83, § 2.

II. OFF-ISLAND

11.0310 Restriction to unavailable services.

Only patients in need of medical services that cannot be provided at the LBJ Tropical Medical Center will be referred for off-island medical care.

History: Rule 7-80, eff 24 Jun 80, § 1.

11.0311 Qualifications.

To qualify for off-island medical referral, the patient must come within one of the categories set forth in 13.0601(a) A.S.C.A. These categories include:

- (1) American Samoans, as defined in 41.0202(1)(c) A.S.C.A., and their spouses and dependent children who are residing in American Samoa at the time medical services are needed.
- (2) Contract employees and independent contractors of the American Samoa Government and their spouses and dependent children as provided by their contracts.

- (3) Civil service employees of the United States Government, and, their spouses and dependent children; provided, that the American Samoa Government will pay only for round-trip transportation and not the medical expenses of such persons, unless they are qualified under other provisions of this section.
- (4) NonAmerican Samoans who are lawfully residing in American Samoa at the time medical services are needed and have been lawfully residing in the territory continuously, except for vacations or visits for periods not to exceed 6 consecutive months, for 10 years.
- (5) U.S. citizens, their spouses and dependents, whose hospital and medical services charges are waived under 11.0302 A.S.A.C., shall be entitled to off-island medical care to the same extent furnished to American Samoans by the government: provided, that the citizen, spouse or dependent will be required to use and apply entitlement to hospital, medical and dental care benefits which he or she may have as a veteran of the armed forces or as a participant under any other program or insurance plan. (b) In all cases of off-island medical referral, the American Samoa Government will be responsible for payment of hospital and medical services in excess of the cost of those services covered by insurance or payable under health care programs of the United States Government applicable to American Samoa. For purposes of this subsection, “insurance” means health, accident, motor vehicle liability, workers’ compensation and other insurance coverage of hospital and medical charges and coverage of such charges authorized or permitted by law in place of insurance.

History: Rule 7-80, eff 24 Jun 80, § 2; and Rule 6-82, eff 1 Nov 82, § 1; and Rule 1-84, eff 16 Feb 84, § 4; and Rule 1-86, eff 10 Jun 86, § 1.

11.0312 Authorization and processing.

- (a) The chief of service immediately concerned fills out an off-island medical referral form and sends it to the office of the director of health.
- (b) The medical referral committee (chiefs of various services) will meet to review each proposed referral case, and after discussing each

case, will recommend approval or disapproval according to policies, procedures, and criteria governing this process.

- (c) The referral form, and the medical referral committee's recommendations are given to the director of health with the patient's medical record for review and decision.
- (d) If approved, the referral form is given to the patient coordinator, who:
 - (1) confirms that the patient meets eligibility requirements;
 - (2) obtains the patient's signature (or legal guardian's signature if the patient is a minor), which obligates the patient to accept the treatment recommended by the physician to whom referred and ascertains that patient understands the document being signed;
 - (3) ensures that the patient's immigration papers (passport and visa) are valid and in possession;
 - (4) obligates funds for the patient's travel and off-island medical care;
 - (5) prepares the travel authorization and obtains the air travel ticket for the patient's transportation: and
 - (6) advise an ambulatory patient of the telephone numbers of American Samoa Office Hawaii and the patient coordinator's residence and that after checking through U.S. Immigration and Customs in Honolulu to call these numbers in case no one is at the airport to meet him or her.

History: Rule 7-80, eff 24 Jun 80, § 3; and Rule 1-86; eff 10 Jun 86, § 2.

11.0313 Transportation from airport to hospital-Ambulance.

When an ambulance is necessary to transport a patient from the Honolulu International to the Tripler Army Medical Center, prior arrangements will be made by the director's office, by telephone or telex, for the TAMC ambulance to meet the patient. The American Samoa Government will not pay for ambulance

service arranged for by the patient, the patient's relative, or anyone else.

History: Rule 7-80, eff 24 Jun 80, § 4, and Rule 1-86. eff 10 Jun 86, § 3.

11.0314 Transportation from airport to hospital-Directness of travel.

It is imperative that the patient proceed directly from the Honolulu International Airport to the Tripler Army Medical Center. Patients must not be transported to the homes of relatives or friends and subsequently transported to TAMC.

History : Rule 7-80, eff 24 Jun 80, § 5.

11.0315 Medical attendants-Children's parents or guardians.

As a general rule, the American Samoa Government will not pay the airfare, room, or meals for relatives or friends to accompany the patient. If the patient's condition requires a medical attendant in transit, the department of health will provide a qualified nurse or physician to accompany the patient. However, if the patient is under 18 years of age, and if deemed necessary by the director of health the American Samoa Government will pay only the round-trip airfare of 1 parent or guardian of the patient.

History: Rule 7-80, eff 24 Jun 80. § 6; and Rule 1-86, eff 10 Jun 86 § 4.

11.0316 Care without referral.

- (a) Except as officials and employees of the American Samoa Government in official travel status may be authorized, the American Samoa Government will not pay for the medical care of any patient who presents himself to the Tripler Army Medical Center or any other health care institution without referral until authorized by the director of health by telephone, telex, or letter.
- (b) The American Samoa Government will not pay for the medical care of any patient who goes to Tripler Army Medical Center or any other institution while on a vacation, family, or village affair.

History: Rule 7-80 eff 24 Jun 80, § 7; and Rule 1-86. eff 10 Jun 86, § 5.

11.0317 **Applicability of provisions to
Letterman Army Medical Center.**

The references to Tripler Army Medical Center in this article shall apply in the same manner in the event of referral to Letterman Army Medical Center in San Francisco.

History: Rule 7-80, eff 24 Jun 80, § 8.

11.0318 **Care in private institution.**

If the patient chooses to go to a private health care institution, the American Samoa Government will pay no more than the Tripler Army Medical Center rate. The government will not make any agreement to pay the excess amount while the patient pays back on any installment plan. The patient or his family shall pay or make financial arrangements with the institution directly.

History: Rule 1-86, eff 10 June 86, § 6.

[End of Title 11 – Chapter 3]

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TITLE 11 – CHAPTER 04 – LBJ AMERICAN SAMOA
MEDICAL CENTER AUTHORITY PERSONNEL
RULES.

Sections:

11.0401 Definitions.
11.0402 Recruitment and Placement.
11.0403 Responsibility.
11.0404 Filling Vacancies.
11.0405 Recruitment.
11.0406 Applications.
11.0407 Cause for Disqualification of an
Applicant.
11.0408 Notice of Disqualification.
11.0409 Examination.
11.0410 Registers.
11.0411 Certification.
11.0412 Types of Appointments.
11.0413 Types of In-Service Placement.
11.0414 Employment of More Than One Person
in the Same Family.
11.0415 Effective Dates of Actions.
11.0416 Classification and Pay.
11.0417 Upgraded Level.
11.0418 Entrance Salary Rate.
11.0419 Reinstatement.
11.0420 Periodic Step Increments.
11.0421 Promotions.
11.0422 Projection of Compensation.
11.0423 Overtime Compensation &
Compensatory Time Policy.
11.0424 Hours of Work, Leave, and Absence
From Duty.
11.0425 Responsibility.
11.0426 Hours of Work.
11.0427 Holidays.
11.0428 Determining Holidays.
11.0429 Holidays During Leave Without Pay.
11.0430 Accrual of Leave During Pay Periods.
11.0431 Annual Leave.
11.0432 Sick Leave.
11.0433 Leave Without Pay.
11.0434 Maternity Leave.
11.0435 Military Leave.
11.0436 Court Leave.
11.0437 Excused Absence.
11.0438 Administrative Leave.
11.0439 Unauthorized Absence.
11.0440 Conduct of LBJ-ASMCA Employees.
11.0441 Separation and Adverse Actions.

11.0442 Voluntary Separation.
11.0443 Involuntary Separation.
11.0444 Demotion.
11.0445 Suspension.
11.0446 Letter of Reprimand.
11.0447 Involuntary Reassignment.
11.0448 Abandonment of Position.
11.0449 Hearing Before the Governing Board of
Directors.
11.0450 Standard Schedule of Disciplinary
Offenses and Penalties.
11.0451 Appeals and Grievances.
11.0452 Appeals.
11.0453 Grievances.
11.0454 Reduction in Force.
11.0455 Furlough.
11.0456 Appeals.
11.0457 Contract Specialist.
11.0458 Contract Recruitment.
11.0459 Contract Compensation.
11.0460 Contract Expiration.
11.0461 Contract Renewal.
11.0462 Miscellaneous.
11.0463 Travel Policy.
11.0464 Travel Approval.
11.0465 Travel Arrangements.
11.0466 Travel Allowance.
11.0467 Travel Report.
11.0468 Travel for Board Members and Chief
Executive Officer.
11.0469 An Oral Report.

Editors Note: ASAC §§ 11.0424 – 11.0468 as well as Chapters 5 and 6 of Title 11 were omitted from the January 2020 version of the Rules currently in circulation.

Recovered documents show the full text of the aforementioned omissions, specifically, the full text of Rules 06-98(ch. 4), 07-98 (ch.5), and 8-98(ch. 6).

The American Samoa Bar Association website contains the text for ASAC §§ 11.0424 – 11.0468 but appears to incorrectly attribute some of these provisions to Rule 01-2000 or Rule 05-2000.

The recovered text for Rule 01-2000 regarding CT Scan and Mammography fees cannot be verified at this time and is under further review. The recovered text for Rule 05-2000 indicates that revisions were made only to 11.0427 (a) and (c).

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Recovered text for the 2005 amendments to Chapter 4 indicate changes were made only to §§ 11.0423, 11.0426 (deleted), 11.0452 (revisions), 11.0454 (revisions), 11.0455 (revisions) only.

11.0401 Definitions.

The following definitions apply throughout this Manual unless clearly indicates another meaning:

ABANDONMENT OF POSITION – Failure of an Employee to report for duty or to return from leave for five or more consecutive work days.

ACCRUED LEAVE – Leave earned by an employee during the current leave year that is unused at any given time during that leave year.

ACCUMULATED LEAVE – Unused leave remaining to the credit of an employee at the beginning of a leave year.

ACTING APPOINTMENT – A temporary appointment made from within LBJ-ASMCA to a supervisory or managerial position.

ADMINISTRATIVE LEAVE – Leave which is proclaimed by the Governor. This would cover such items as national days of mourning, natural disaster, power failures, etc. Only the Governor is authorized to grant administrative leave.

AGENCY – A department, office, or other separate unit or division of LBJ-ASMCA established by law or the Chief Executive Officer, upon which is conferred powers and imposes duties in connection with operations of LBJ-ASMCA.

ANNUAL LEAVE – Leave as authorized absence from duty with pay to allow an employee an annual vacation period for rest and relaxation and to provide time off for personal reasons. The use of annual leave must be officially authorized prior to being taken.

APPEAL – Response to an adverse action against an employee. The right of appeal extends to such actions as classification decisions, disciplinary actions, actions of alleged discrimination and such other actions as provided for in this manual.

APPOINTING AUTHORITY – The person that is lawfully authorized to make appointments. The appointing authority for the LBJ American Samoa Medical Center Authority is the Chief Executive Officer (CEO).

AREA OF COMPETITION – The area from which candidates for vacancies or examinations are drawn. Areas of competition can be limited to a single agency or to ASG upon approval of the Chief Executive Officer. LBJ-ASMC – For the purposes of this manual, LBJ-ASMCA means LBJ-American Samoa Medical Center Authority.

BASIC SALARY RATE – The dollar amount of the step of the salary range to which an employee is paid at before any deductions.

BOARD – As used in this Manual, is the Governing Board of Directors which hears and renders decision on all appeals filed by employees.

BUMPING – The replacement of an incumbent, subject to reduction-in-force by another employee who has higher seniority.

CAREER LADDER – The type of position structure within an organization, for occupational field which provide for the assignment of higher level of duties and responsibilities upon an employee assumption of the required knowledge's and abilities so that upward mobility is available from entry-level or trainee positions to senior or specialist positions. Such position patterns provide for increased career development opportunities for employees but at the same time must meet the organization's needs and objectives.

CAREER SERVICE – Includes all employees of LBJ ASMCA except contract specialist. All career service employees are members of the ASG Employees' Retirement Fund.

CERTIFICATION – A process whereby employees who have passed the examination for a given class are eligible to be considered for vacancies in that class.

CLASS – Identification of a position or a group of positions sufficiently similar in duties so that the same requirements of training, experience, skills, and salary range may be applied.

COMPENSATORY TIME – Time off in lieu of cash payment for overtime.

COMPETITIVE PERSONNEL ACTION – Type of personnel action which can be effected only if applicable competitive procedures (i.e., those governing advertising examining) have taken place.

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CONFLICT OF INTEREST – A situation in which an employee’s private interests, usually of an economic nature, conflict or raise a reasonable question of conflict with his public duties and responsibilities.

The potential conflict is of concern whether it is real or apparent.

CONTRACT SPECIALIST – A person who has entered into an agreement with the LBJ American Samoa Medical Center Authority to perform specified duties and responsibilities for a specific period of time.

DEMOTION – Change of an employee from a position in another class having a lower salary range.

DEPARTMENT – An independent entity--- Executive Branch headed ----the Chief Executive Officer nominated by the Governing Board and confirmed by the Senate. This term includes departments, offices and agencies.

DESIRABLE QUALIFICATION – The levels of education and/or experience deemed Desirable or preferable for admission to the examination in lieu of or above and beyond fixed minimum qualifications.

DETAIL – The temporary assignment of an employee to a different position for a specified period with the employee returning to his regular duties at the end of the detail. Technically, a position is not “filled” by a detail, as the employee continues to hold the position from which the employee is detailed.

DIRECTOR – As used in this manual, the Chief Executive Officer of LBJ-ASMCA.

DISABLED VETERAN – An individual who has served on active duty in the armed forces of the United States, and has established the present existence of a service-connected disability or is receiving compensation, disability retirement benefits or pension because of a public statute administered by the Veteran’s Administration or a military department of the United States.

DISMISSAL – The termination of employment of a permanent employee or contract specialist for cause or of probationary employee as specified in this manual.

DIVISION – As used in this Manual, the Human Resources Division.

DOUBLE TIME PAY – Pay which is twice the regular rate of pay of an employee.

ELEVATION – Restoration of an employee to the original classification, with permanent status, which the employee held prior to having been granted a voluntary demotion.

ELIGIBLE – An applicant whose name is on a register of persons who qualified for a particular class of position.

EMERGENCY APPOINTMENT – An appointment to a position pending the establishment of a register for that class or for emergency reasons not to exceed six (6) months.

EMPLOYEE – Any individual who works for LBJ-ASMCA under the Appointing Authority of the Chief Executive Officer.

EXCUSED ABSENCE – An absence from duty, duly authorized the supervisor or Chief Executive Officer, without charge to annual leave or loss of pay or service credit and which is authorized for such circumstances as jury duty, military training, voluntary blood donation, or any other good cause as approved by the Chief Executive Officer and reaffirmed by LBJASMCA Governing Board.

EXECUTIVE UNGRADED POSITIONS – Those positions of cabinet rank within the Executive Branch and Special or Executive Advisors to the Governing Board.

EXEMPT POSITION – Any position designated as exempt from the overtime provisions of the Fair Labor Standards Act. Professional executive and administrative positions are usually exempt and such positions are coded “E” in the job codes.

FAIR LABOR STANDARD ACT (FLSA) – A U.S. Law that contains provisions and standards concerning minimum wage, equal pay, overtime pay, recordkeeping and child labor. The Act is administered by U.S. Department of Labor’s Wage and Hour Division.

FULL-TIME EMPLOYMENT – Regularly scheduled employment requiring an average of 40 hours of work per week. However, for certification

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from a register, work between 32-40 hours per week shall be considered full-time.

FURLOUGH – Placing an employee on leave without pay because of lack of funds or curtailment of work when it is intended to recall him to duty within one year, or thirty days if it is a short furlough, and to recall him to the position he held at the time of furlough.

GOVERNMENT (ASG) – For the purpose of this manual ASG means the American Samoa Government.

GRIEVANCE – An Employee’s expressed feeling of dissatisfaction with aspects of the employee’s working conditions and working relationships which are outside of the employee’s control. A grievance is not an appeal.

HOLIDAYS – Days set aside to celebrate a religious, state or other event for which LBJ-ASMC employees receive time off with pay. Holidays are established by law or are designated by the Governor.

INCENTIVE AWARDS – Recognition for employees who demonstrate exceptional resourcefulness or skills or perform exceptional acts. Procedural guidelines and evaluation selection are to be developed by the Chief Executive Officer.

INCUMBENCY ONLY POSITION – A position which when vacated by the current Incumbent (i.e., the employee currently filling the position) shall not be filled again.

INTERMITTENT EMPLOYMENT – Means when actually employed for which payment of compensation is restricted to time actually worked. The intermittent provision may apply to any type of appointment.

INTERVENING SALARY STEPS – All increments steps in a salary range except the lowest and highest.

JOB CODE – A four digit code designating a class in terms of its exempt or non-exempt status, salary structure to which assigned, grade level and job family.

JOB FAMILY – A group of related series of classes of positions such as clerical, personnel engineering or education, etc.

LEAVE WITH PAY – Authorized absence from duty with compensation.

LEAVE WITHOUT PAY – Authorized absence from duty without compensation, exclusive of suspension or absence without leave (AWOL). Total time involved may not exceed one year.

LEAVE YEAR – The period beginning with the first day of the first complete pay period in January and ending with the last day of the last pay period in December.

MATERNITY LEAVE – Approved absence because of incapacitation related to pregnancy and confinement. It is chargeable to sick leave or any combination of sick leave, annual leave and leave without pay in order given.

MINIMUM QUALIFICATION – The training, experience and other qualifications established for a given class and required of an applicant for admission to the examination for that class.

NON-COMPETITIVE PERSONNEL – Type of personnel action which does not require a qualified employee to formally compete with others in order for the personnel action to be effected.

NON-EXEMPT POSITION – Any position designated and subject to the overtime provisions of the Fair Labor Standards Act, shall be coded “N” in the job code. If an employee in the job code. If an employee in such position is required to work more than 40 hours per week, any hours worked above this number will be paid at the rate of one and half times the regular rate. The regular rate is not necessarily the same as the classification or base salary rate.

NON-STANDARD WORK WEEK – Irregular or indeterminate hours worked by Employees, the nature of whose duties commonly or frequently precludes successful job completion in standard work weeks over a prolonged period.

OUTSIDE WORK – All gainful employment other than the performance of official duties. It includes, but is not limited to, self-employment working for another employer, the management or operation of a private business for private again.

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OVERTIME – Any hours in excess of 40 hours per week during a regular work week shall be considered overtime.

PART-TIME EMPLOYMENT – Any employee that works less than 32 hours per work week shall be considered part-time.

PAY ADJUSTMNT – Change in rate of compensation due to revision of salary schedules of LBJ American Samoa Medical Center Authority or for reasons not covered elsewhere.

PERIODIC INCREMENT DATE – The date established in accordance with the Merit System rule on which an employee is entitled to the next salary step increment within his range as stated in the compensation plan.

PAY PERIOD – A two-week period which starts on a Sunday in the first week and ends on Saturday of the second week.

PERMANENT EMPLOYEE – An employee appointed without time limitation in the career service who has successfully completed a probationary period.

POSITION – A group of duties and responsibilities. A position may be filled or vacant, full-time or part-time, temporary or permanent.

POSITION DESCRIPTION – A written description of each group of duties and responsibilities constituting a “position”.

PREFERENCE ELIGIBILITY – A U.S. Citizen or a U.S. National who is a veteran as defined in this Manual or a disabled veteran as defined in the Manual is entitled to receive preference points during the hiring process.

PREMIUM PAYMENT – Wage payment over and above the basic salary rate for extraordinary conditions of employment, such as overtime and special tours of duty.

PROBATIONARY PERIOD – The trial period of employment following certification and appointment to, or re-employment in, the career service and continuing for one year.

PROMOTION – A change of an employee from a position in one class to a position in a class having a higher salary range.

REASSIGNMENT – Movement of an employee from one position to another in another or same division which does not involve a change in grade or basic rate of compensation. This also include movement from one salary schedule to another.

REDUCTION IN FORCE – A separation from service because of lack of fund and/work and/or reorganization and without cause on the part of the employee.

REGISTER – A list of eligible names established for employment or re-employment in a class.

REGULAR RATE OF PAY – The total remuneration for employment which includes the basic salary rate and such other direct payments as allowed by FLSA and which is the basis for establishing overtime and holiday pay. The regular rate of pay is usually expressed on an hourly basis.

REINSTATEMENT – Appointment of an employee who has previously successfully completed one year probationary period: reinstatement may be made non-competitively without regard to registers of eligible to a position at the same or lower grade level and requiring essentially the same qualifications as that in which the employee previously served.

RESIGNATION – A voluntary separation from employment.

REVERSION – Voluntary or involuntary movement of an employee during a six month trial service period to the lower class which held prior to last promotion.

SALARY RANGE – A sequence of minimum, intervening and maximum dollars amounts assigned to a specific class.

SCREENING COMMITTEE – Consists of three American Samoa Medical Center Authority employees who have been appointed by the Chief Executive Officer to objectively review applications for classes of positions classified at Grade 9 and above for written or comprehensive written oral or performance examination exists. Members evaluate the experience and training recorded on an application against the minimum qualifications

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officially established for the class and rank the applicants in the order of best qualified.

SELECTING AUTHORITY – The Authority to select individuals for positions. Selecting Authority differs from appointing Authority in that the former can select individuals for employment but not offer them a position.

The offer must come from the Appointing Authority in order to be official.

SELECTIVE CERTIFICATION – The certification of eligible possessing the special qualifications required for a specific position.

SICK LEAVE – Absence from duty because of illness or other disability or exposure to contagious disease. The use of sick leave must be officially documented upon return to duty.

STANDARD WORK DAY – An assigned eight-hour work period.

STANDARD WORK WEEK – Forty-hours divided into five regularly assigned eight-hour days within a seven day period.

SUPERVISOR – Any individual having substantial responsibility on behalf of management to regularly participate in performance evaluation of all or most of the following functions over at least three employees. A Supervisor may initiate and recommend actions on promotion, inter-lateral transfer of employees, suspension of employees, and handles employee grievances at the lowest level. A Supervisor is required to exercise independent judgment in carrying out supervisory duties.

SUSPENSION – An enforced absence without pay for disciplinary purposes.

TEMPORARY EMPLOYMENT – Employment during the absence of a permanent employee on leave; or for work done at a workload peak and normally lasting for less than six (6) months but not exceeding one year.

TERMINATION – Separation from employment for reasons beyond the control of the employee.

TIME AND ONE-HALF PAY – Pay which is one and one-half times the regular rate of pay.

TRIAL SERVICE PERIOD – A six-month trial period of employment of a permanent-employee beginning with the effective date of a promotion or demotion.

UNDERFILL – The filling of a position with an employee in a lower related class in the absence of an adequate eligible register for the positions classification.

VETERAN – An individual who has served on active duty in the armed forces of the United States for a period of not less than 180 consecutive days (other than for training) and who has been separated from the armed forces under honorable conditions.

WORK WEEK – A regular recurring period of 168 hours in the forms of seven consecutive 24-hour periods. It may begin on any day of the week and at any hour of the day and needs not be the same for all agencies and all employees.

History: Rule 06-98, eff. Mar. 3, 1999.

Editors Note: Revisions to the following definitions: Emergency Appointment: missing text inserted as follows: "...class or for emergency reasons..." Screening Committee: Revised as follows: "...exists. Members evaluate the experience and training recorded on an application against minimum qualifications..."

11.0402 Recruitment and Placement.

In filling vacancies within the career service of the American Samoa Medical Center Authority, it is the policy of LBJ-ASMC Authority that:

- A. Appointments and promotions to all positions shall be made solely on the basis of merit, fitness, and experience.
- B. The same standards and methods shall be used in evaluating all candidates who are in competition for the same class of work.
- C. Permanent residents of American Samoa, or persons entitled to permanent residence as determined by the Immigration Law of American Samoa, shall be given first consideration for employment. This includes persons who meet the following criteria:
 - 1. The applicant was born in American Samoa.

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2. One of the parents of the applicant was born in American Samoa.
3. The applicant is married to an American Samoa.
4. The applicant is legally adopted by an American Samoan.
5. The applicant has resided continuously in American Samoa for at least ten years and has been approved by the Immigration Board.

D. Applicants who have been selected for positions in the career service must successfully pass a pre-employment physical examination before they can be appointed.

History: Rule 06-98, eff. Mar. 3, 1999

11.0403 Responsibility.

A. The Chief Executive Officer (CEO) has primary responsibility for establishing and administering procedures for filling vacancies in compliance with U.S. Civil Service Commission and American Samoa Government laws and regulations. However, all employees and supervisors share responsibility for the successful operation of the system.

Specifically the CEO is responsible for:

1. Developing a merit system policy and procedural guidelines for filling positions.
2. Providing leadership and support for the merit system as it relates to all segments and activities of LBJ-ASMC Authority.
3. Assuring that managers and supervisors are aware of the objectives and requirements of this program.
4. Assuring that current employees are offered first opportunity for consideration when new job openings arise.

B. Managers and Supervisors are responsible for:

1. Providing active support to the objective of the merit system and fully comply with the intent, as well as the procedural requirements of the program.

2. Evaluating candidates fully and equitably to assure that each selection conforms to the objectives of an effective merit system.
3. Selecting from among the best qualified candidates those that are nominated for appointments as well as those for promotion.
4. Providing firm merit system support to employment and keeping them fully informed with information on the merit system and operation.
5. Counseling employees on ways to improve promotion potential and assisting them in self-development activities.
6. Participating with personnel officials in determining qualification requirements and evaluation methods for specific positions.

C. The Human Resources Division is responsible for:

1. Developing and employing the procedures necessary for the implementation and evaluation of the promotion plan.
2. Assuring that the requirements of the Merit System have been satisfied before taking personnel action on a position change.
3. Providing the necessary technical competency requirements that are essential to operate the Merit System and publicize its operation.
4. Announcing position vacancies and selections as appropriate, preparation and maintaining lists of eligible and referring certificates to selecting officials.
5. Maintaining the required documentation of all personnel action covered by the plan.
6. Developing, in cooperation with managers and supervisors, qualification requirements and evaluation methods for specific positions.

D. Employees are responsible for:

1. Familiarizing themselves with the provisions of the Merit System.

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2. Personally applying for an announced vacancy in which they are interested, and for which they meet qualifications necessary for the positions for which they seek consideration.
3. Demonstrating that they have the skills, abilities and personnel qualifications necessary for the positions for which they seek consideration.
4. Performing the duties of their current positions in a manner indicating they are ready for advancement to more difficult work and greater responsibility.

History: Rule 06-98, eff. Mar. 3, 1999

11.0404 Filling Vacancies.

- A. Vacancies can either be filled competitively or non-competitively, competition procedures apply to the following types of actions:
 1. Selection of a non-ASMC Authority employee to either a permanent or temporary appointment.
 2. Promotion of an employee in the career service except under circumstances specified under (Section 2.3 B).
 3. Selection of an employee in the career service for detail to a higher graded established position in the career service for more than 30 calendar days.
 4. Reassignment of a career service employee to another position, in the career service with known promotion potential.
 5. Reinstatement of a former American Samoa Medical Center Authority employee who has completed his probationary period in the career service to a higher grade position than the candidate's last position or to a position with known promotion potential.
 6. Selection of an LBJ-ASMC Authority employee who is currently on an emergency appointment to a temporary or permanent position.
- B. Non-competitive procedures apply to the following types of actions:

1. Promotions of an employee for which competitive procedures were used at an earlier date, such as:
 - a. Career promotion(s), reassignment etc., made under training agreements approved by the Human Resources Division.
 - b. Promotion(s) made after competitive selection for detail.
 - c. Career promotion(s) of employees up to the full performance level position in the career ladder.
 - d. Career promotion(s) of employees in an understudy position to the target position.
2. Promotion(s) of incumbents to positions in the competitive service reconstituted in higher grades because of:
 - a. Change in classification standards.
 - b. Error in the allocation of the original positions.
3. Reinstatement of employees to positions of grades from which they were demoted without causes to intermediate grades below the grade from which demotion was based on.
4. Lateral reassignment between positions with no promotional potential.
5. Reinstatement of a former American Samoa Medical Center Authority employee who has completed his probationary period in the career service to the same or similar class that was held previously in LBJASMC Authority.

History: Rule 06-98, eff. Mar. 3, 1999

11.0405 Recruitment.

- A. In filling vacancies competitively, all recruitment efforts shall be conducted publicly in any manner which will attract a sufficient number of qualified persons to meet the needs of the career service. Recruitment will be coordinated through the Chief Executive Officer. Vacancy announcements and/or

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examination notices shall be posted publicly, as selected by the Chief Executive Officer, and the Human Resources Division. They shall specify title and salary range of the class, information of the duties performed, applicable minimum or desirable qualification, and type of examination.

- B. Vacancy announcements and/or examination notices may be issued for either definite or indefinite time periods. When recruitment is conducted for a definite time period, the announcement and/or notice shall specify the closing date for receipt of applications; provided, that the recruiting period shall be or no less than five (5) working days. When recruitment is conducted for an indefinite time period, the announcement and/or notice may be canceled at anytime upon appropriate public notice.
- C. Vacancy announcements and/or examination notices do not have to be announced throughout the Territory. As requested in writing, approved by Chief Executive Officer, the announcement can be limited to all permanent career service employees within LBJ-ASMC Authority. Such limited areas of consideration can be justified due to budgetary reasons, manpower controls or reorganizations, etc.
- D. Vacancy announcements and/or examination notices will be distributed to all supervisors when recruitment is conducted on a service wide basis appropriate and reasonable distribution within LBJ-ASMC Authority is the responsibilities of the Human Resources Division. Additionally, when recruitment is conducted on an internal basis, distribution of the examination announcement will be the responsibility of the Human Resources Division.

History: Rule 06-98, eff. Mar. 3, 1999.

11.0406 Applications.

- A. All applications shall be on a form prescribed by the Human Resources Division. The applicant's signature shall certify the truth of the stated information. Applications shall remain under active consideration by LBJ-ASMC Authority for one year from the date received. After that period, they will be returned to the applicant who did not obtain employment with LBJ-ASMC Authority.

- B. No information shall be solicited or accepted which reveals religious or political affiliations of the applicant. Information regarding the race or color of applicants shall be solicited only for use in an affirmative action minority employment program.
- C. Only those applications filed with the Human Resources Division by the date specified in the vacancy announcement or examination notice need to be considered for an examination.
- D. Any person who willfully makes false statements concerning a material matter in any application for employment with LBJ-ASMC Authority shall be terminated once the false information is discovered even after the applicant has been employed by LBJ-ASMC Authority.

History: Rule 06-98, eff. Mar. 3, 1999

11.0407 Cause for Disqualification of an Applicant.

The Human Resources Manager is expected to follow accepted standards of personnel practice in screening applicants and may refuse to examine an applicant or, after examination, may disqualify such applicant or remove the applicant's name from a register or refuse to certify any person otherwise eligible or register it:

- A. The Applicant is found to lack any of the requirements established for the class.
- B. The applicant is so disabled as to be rendered unfit to perform the duties of the class.
- C. The applicant is addicted to the use of narcotics, or the habitual excessive use of intoxicating beverages.
- D. The applicant has been convicted of any offense that would adversely affect LBJ-ASMC Authority's image which would be grounds for disqualification from the position the applicant is seeking.
- E. The applicant has made a false statement of material fact in his application.
- F. The applicant has previously been dismissed or requested to resign from private or public service for delinquency, misconduct, inability to do similar work, or any other such cause directly

having bearing upon applicant's fitness as an employee.

- G. The applicant has used, or attempted to use, bribery to secure an advantage in the examination or appointment.
- H. The applicant has directly or indirectly obtained information regarding examinations.
- I. The applicant has otherwise violated provisions of this Manual.

History: Rule 06-98, eff. Mar. 3, 1999.

Editors Note: 11.0407(A) – Missing text revised: "The Applicant is found to lack any of the requirements established for the class."

11.0408 Notice of Disqualification.

- A. An applicant may be disqualified and not permitted to take a vacant position if the applicant has violated any of the provision listed under cause for disqualification.
- B. The Human Resources Division shall notify a disqualified applicant promptly using the last known address citing the reason(s) for disqualification.

History: Rule 06-98, eff. Mar. 3, 1999.

11.0409 Examination.

- A. The Chief Executive Officer or his designated representative shall determine, by uniform standards, the appropriate examination for a register for a class and the tests or combination of tests and relative weights to be assigned, ensuring at all times that the examinations are job related.
- B. Examinations shall be practical in nature, job related and of such character as to determine the capacity of the applicant to perform the duties of the particular class of positions for which the applicant is competing as well as the applicant's general background and related knowledge and shall be rated objectively. A passing score may be required on each test included in the examination. In preparing such examinations or selecting incumbent in the absence of examination, administrators shall take cognizance of the trend in American Samoa toward a greater degree of self-determination, and the need for training opportunities for

citizens or residents of American Samoa in furthering that transition. Whenever possible, therefore, standards for employment will give all due recognition to practical experience in the function and probable aptitude for learning while on the job, rather than relying in the main on formalized education and training.

- C. Examinations shall normally consist of one or a combination of the following:
 - 1. A written test.
 - 2. A performance test.
 - 3. An oral test.
 - 4. An evaluation of experience and training.
- D. Examinations shall be held at such times and places as are necessary to meet the requirements of the career service, provide economical administration, and be generally convenient for applicants.
- E. Examinations shall be announced once the Chief Executive Officer determines the need and shall be open to all current career service employee of LBJ-ASMC Authority such examinations shall consist of any combination of written, performance or oral test or rating of training and experience.
- F. The announcement of the examination shall specify the desirable or minimum requirements, the parts of the examination and the method of rating. Announcements shall be prominently posted to ensure that the information is reasonably available to all LBJ-ASMC employees.
- G. A performance evaluation may be used in promotional scores provided that the Chief Executive Officer determine such evaluations are practical and necessary to improve the effectiveness of the examination.
- H. Each applicant shall receive notice of final rating as soon as it is computed. Within 30 calendar days following the test, the applicant may request and receive information regarding their score on any part of the examination.

- I. When it is necessary to evaluate the experience and screening of applications for a class at grade nine or above for which there is no comprehensive written, oral, or performance exam, a screening committee shall be appointed by the Chief Executive Officer to examine and rank all applications. Members of the screening committee shall be chosen primarily for their ability to judge the technical and personal qualifications of people in their general field of work impartially and objectively. At least one member shall have experience and training and is generally familiar with the nature of the work in the class, and one member shall represent the immediate office in which the opening exists. No screening committee may have less than three members. The Human Resources Manager is responsible for conducting all committee sessions, and for assuring that no discriminatory practices take place. The name of screening committee member shall not be disclosed and shall be kept confidential.
- J. The Chief Executive Officer may investigate the applicant's training and experience to verify the statements contained in his application. If the investigation produces information affecting the rating of training and experience, the Chief Executive Officer shall re-rate the applicant's record accordingly and make any necessary adjustments in the register. The Chief Executive Officer shall also promptly notify the applicant of such re-rating within ten (10) working days following completion of the investigation.
- K. In the first open competitive examinations, veterans shall receive the following preferences:
 1. Ten additional points to a disabled veteran. The preference shall be utilized to the first open competitive examination only and not in any promotional examination.
 2. Five additional points to a veteran. This preference shall be utilized in the first open competitive examination only and not in any promotional examination.
 3. The names of preference eligible shall be entered upon the appropriate registers ahead of others having the same score.
 4. If the screening committee passes over a preference eligible whose name appears on the certificate of eligible forwarded to him and selects a non-preference eligible, the screening committee shall file written reason for such action with the Chief Executive Officer for his final approval.
 5. When three or more names of preference eligible appear on a certificate of eligible, the screening committee may select only a preference eligible to fill the vacancy under consideration and forward to the Chief Executive Officer for final approval.

History: Rule 06-98, eff. Mar. 3, 1999

11.0410 Registers.

- A. The following types of registers shall be established and maintained by the Human Resources Division:
 1. Reduction-in-force Register.
 - a. The reduction-in-force register will consist of appropriate classes and the names of all employees who have permanent status and have been notified that they are scheduled for reduction-in-force; or who held permanent status prior to separation due to a reduction-in-force; or who have accepted a voluntary demotion in a class in lieu of a reduction-in-force; or were in a trial service period with another department and separated due to reduction-in-force.
 - b. The employee's name shall appear for all classifications in which the employee held non-probationary permanent status.
 - c. Method of Ranking: The register will be ranked according to seniority and official performance evaluations.
 - d. Life of Register: An eligible name will normally remain on this register for one year.
 - e. Special Provisions: Employees appointed from this register will

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- assume the same status they held prior to the reduction-in-force.
2. Promotional Register. This register will be established by appropriate classes and shall include the names of current permanent employees: and/or past permanent employees who have been separated due to reduction-in-force within the last year and who have received a passing final grade in the total promotional examination and are eligible to be certified.
 - a. Method of Ranking. This register shall be ranked according to final score from the highest to the lowest.
 - b. Life of Register. An eligible name will normally remain on this register for an indefinite period unless replaced by a register established by use of a substantially new examination.
 - c. Special Provisions. An employee may convert any current open competitive rating to this register upon achieving permanent status. Persons on this register will indicate the geographic areas and agencies for which they are available.
 3. Opening Competitive Register:
 - a. Composition. This register will contain the names of all persons who have passed the appropriate examination for each class of work.
 - b. Method of Ranking. This register shall be ranked by the final score.
 - c. Life of Register. An eligible name will normally remain on this register for an indefinite period unless replaced by a register established by use of a substantially new examination.
 4. Reassignment Register:
 - a. Composition. This register shall contain the names of all permanent employees who have submitted a request to be considered for reassignment.
 - b. Method of Ranking. This register will be unranked.
 - c. Life of Register. An eligible name shall normally remain on this register for one year.
 - d. Special Provisions. To use this register the employee must transfer either within the same class on the same pay range having the same salary range number.
- B. Grievance for Removal from the Register. The Chief Executive Officer may remove the name of an eligible from a register for any of the following reasons:
 1. On evidence that the eligible cannot be located.
 2. On receipt of a statement from the eligible declining an appointment and stating that the eligible no longer desires consideration for a position in that class.
 3. If three offers of a probationary appointment to the class for which the register was established have been declined by the eligible.
 4. If an eligible fails to reply to a written inquiry as to availability after five days in addition to the time required to received and return the inquiry.
 5. If an eligible accepts an appointment and fails to appear for duty at the time and place specified without giving satisfactory reasons for the delay to the appointing authority.

History: Rule 06-98, eff. Mar. 3, 1999
Editors Note: 11.0410 (A)(4)(d) – Missing text inserted as follows: "...range number."

11.0411 Certification.

- A. Requests for certification will submitted on the LBJ-ASMC Form 35 by the Human Resources Manager to the Chief Executive Officer when filing vacancies in existing or newly allocated positions.

- B. Upon receipt of a request for certification, the Chief Executive Officer shall certify to the screening committee a list of no more than five names from which a selection can be made.
- C. One name will constitute a complete certification when referrals are made from the reduction-in-force register. Selection shall be mandatory.
- D. When more than one candidate has the same examination rating, the certified candidate shall be chosen on the basis of proven experience and years of work experience.
- E. The Chief Executive Director will normally certify names from the registers in the following order:
 - 1. Reduction-in-force Register.
 - 2. Promotional Register.
 - 3. Open Competitive Register.
 - 4. Reassignment Register.
- F. When there are fewer than five names to be certified from the register with the exception of (Section ---) names may be certified from other registers to total five candidates.
- G. Reports of actions taken on certified eligible by the screening committee shall be in writing to the Chief Executive Director within ten working days following certification unless the Chief Executive Officer has specifically granted an extended time. Fair consideration must be given to all certified names. The following actions are allowed and/or required:
 - 1. Appropriate appointment of one of the certified names.
 - 2. Request for additional names to replace names of eligible who:
 - a. Fail to reply within four (04) days of notice to appear for consideration.
 - b. Are not satisfactory for valid and pertinent reasons directly connected with the position as determined by the Chief Executive Officer from a written report by the screening committee.

History: Rule 06-98, eff. Mar. 3, 1999

1111.0412 Types of Appointments.

The following types of appointments exist within the career service:

- A. Emergency Appointment.
 - 1. When an emergency occurs requiring the immediate services of a person or persons, a request that an emergency appointment be made.
 - 2. Justification for the emergency appointment shall be approved by the Chief Executive Officer before any personnel action is taken to effect an appointment.
 - 3. An emergency appointment of an individual shall not exceed 30 calendar days unless the Chief Executive Officer extends the appointment up to a maximum of one additional 30-day period based on justification and continuing state of emergency.
 - 4. Service in an emergency appointment shall not constitute a part of the employee's probationary period.
- B. Temporary Appointment.
 - 1. Appointment to a temporary position shall have a specific time limitation and cannot exceed one year.
 - 2. Established register certification and referral service are available for the in filing temporary positions. A temporary employee who has been appointed following certification from the register may enter a probationary period and subsequently gain permanent status when a change in needs results in the permanent availability of the position.
 - 3. A permanent employee has the right to assume a temporary position and the right to resume a permanent position with status at the conclusion of such temporary appointment.
 - 4. A temporary employee may be terminated from temporary service without the right of

appeal or hearing after being given one full working day's notice prior to the effective date of the termination.

5. Service in a temporary appointment shall not constitute a part of the employee's probationary period.

C. Permanent Appointment.

1. Permanent Appointments are those with no time limitation.
2. Employee who receives appointments to permanent positions from the open competitive register shall serve a probationary period of one year, if they have not completed an earlier probationary period. This probationary period will provide the selecting authority with the opportunity to observe a new employee's work, to train and aid the new employee in adjusting to his/her position, and to terminate any employee whose work performance fails to meet the required standards. Time spent in temporary and emergency appointments even though there is no break in service, in creditable toward the probationary period.
3. Conversion of a probationary employee to a non-probationary status shall be automatic unless the person is dismissed under provision of (Sections 2.7 or 2.8).
4. Veterans and their widows who are not remarried and are in probationary status will be granted seniority preference within the rank of the permanent employees until they acquire permanent status.
5. An employee may be dismissed during the probationary period after being given written notice stating the reason therefore five working days prior to the effective date of dismissal. However, if LBJ-ASMC Authority believes the good of the service requires the immediate dismissal of the probationary employee, written notice of only one full working day prior to the effective date of the dismissal will be required. The reasons for the dismissal

shall be filled with the Chief Executive Officer.

6. An employee dismissed during a probationary period shall not have the right to appeal the dismissal. When proper advance notice of the dismissal is not given, the employee may enter an appeal for payment of salary for up to five days which the employee would have worked and proper notice been given. If such a claim is sustained, the employee will be entitled to the appropriate payment of salary but will not be entitled to reemployment in his position.
7. An employee facing reduction-in-force may be transferred during a probationary period and continue to serve out his probationary period.

D. Reinstatement.

1. Any person who has received permanent appointment to a position in the career service, and who has separated therefrom, may be reinstated to a position with the same or similar duties to those previously performed, provided re-employment is not prohibited by regulations or laws relating to the re-employment of employees separated for cause or who have abandoned their positions.
2. Reinstatement to the same class of work or grade previously held in non-Competitive.

History: Rule 06-98, eff. Mar. 3, 1999.

Editor's Note: 11.0412(c)(4) – Missing text inserted as follows: "...until they acquire permanent status."; 11.0412(c)(5) – Missing text inserted as follows: "An employee may be dismissed..."

11.0413 Types of In-Service Placements.

The following types of in-service placement exist with the career service:

A. Promotion.

1. Insofar as practicable, consideration shall be given to employees within LBJ-ASMC Authority and vacancies filed as intra-division promotion before consideration of employees on open competitive register.

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2. No employees shall be certified from a promotional register until that employee has gained permanent status; however, a probationary employee may be admitted to a promotional examination if the announcement for the position vacancy has an established closing date and if the employee has served three months of his probationary period. Employees who are otherwise qualified will be admitted to promotional examinations if they are within two months of the experience required of the minimum qualifications and are assigned to a position which provides qualifying experience.
3. Promotions are either competitive or non-competitive (Section 2.3).
4. An employee who is promoted into a class within LBJ-ASMC and who fails to satisfactorily complete the trial service period shall be given 15 calendar days written notice no earlier than 90 days after assuming the position. At the time the notice is received by the Chief Executive Officer the employee shall automatically revert to his former classification. An employee who is reverted does not have the right of appeal. If an employee is unable to be placed into another position at the end of a total of 180 days, he shall be terminated.

B. Reassignment

1. A transfer of a permanent employee from a position in another class having the same salary range may be made upon approval of the Chief Executive Officer if the employee has met the minimum qualifications for the position to which transfer is proposed. The Chief Executive Officer may require a qualifying examination.
2. Transfer of a permanent employee within LBJ-ASMCA may be made at any time with the approval of the selecting authorities concerned, provided employees who have been separated due to reduction-in-force have first been offered the transfer in accordance with their seniority.

Report of the transfer shall be made to the Chief Executive Officer. Employees who transfer under the provisions of this Section shall not serve a trial period and shall be permanent employees.

3. Reassignments are either competitive or non-competitive (Section 2.3)

C. Detail.

1. “Details” are available to management to assist in meeting temporary needs of the LBJ-ASMCA’s work program when necessary services cannot be obtained by other desirable or practical means.
2. Emergency details are those made to meet emergencies occasioned by abnormal workload, change in mission or organization, or unanticipated vacancies. These may be made as necessary, subject to the provisions herein. Other details such as those pending official assignments, (i.e., pending recruitment and selection of the best qualified person for the position), should not be made until at least three months after initial appointment.
3. An appointment to a position in an acting capacity is a detail. A detail can be either competitive or non-competitive (Section 2.3). Details should be kept as short as possible.
4. Details for 30 calendar days or more shall be reported on the Notice of Official Personnel Action (LBJ-ASMCA Form 303), maintain as a permanent record in Official Personal Folders. Details for fewer than 30 calendar days need not be officially documented as LBJ-ASMCA Form where an employee is asked to serve in a higher position in an acting capacity, this should be recorded by memo whether also reported in the Notice of Official Personnel Action (LBJ-ASMCA Form 303) or not.
5. Human Resources Division is responsible for keeping details within the shortest practicable time limits and for making a continuing effort to secure necessary

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services through use of appropriate personnel actions.

6. An employee shall have the option of declining a non-emergency detail to a higher graded position if the detail is to be for 30 calendar days or longer, unless otherwise be awarded the pay of the higher position beginning on the 31st day of the detail, in which case the employee may not decline a non-emergency detail.
7. A detailed employee shall not achieve or lose any status by reason of the detail and upon termination of a detail the employee resuming his position shall be entitled to pay increments accrued during the period of the detail. If an employee's increment date falls due while the employee is serving on a detail with the different salary, the increment shall apply to the salary of the original position and not to the salary of the position being held on a detail basis.
8. All details to higher grade positions will be confined to a maximum period of 120 days with the extension. If management fails to initiate an LBJ-ASMCA Form 303 to terminate the detail at the end of the stated period, the Human Resources Division shall initiate the action.
9. Detail appointments shall be from among those employees who are interested and available to accept such appointments when there are no individuals available who meet the minimum requirements. Primary consideration should, however, be given to eligible on LBJ-ASMCA promotional register for the class or for a related class as determined by the Chief Executive Officer.
- (10) An employee who accepts a detail for 30 calendar days or more to a higher grade position shall be paid according to the rule regarding promotion. An employee accepting a detail for less than 30 calendar days shall retain his current salary.
- (11) An employee shall not achieve permanent status in the position to which the employee has been detailed and upon termination of

the detail shall resume former permanent position and salary including increments which may have accrued.

12. A detail can be either competitive or non-competitive (Section 2.3).
13. An acting appointment is detail of a temporary nature made from within the career service to a supervisory or managerial position.

D. Demotion.

1. Demotion may be disciplinary or non-disciplinary, voluntary or nonvoluntary.
2. Demotion, in any instance other than a position being incorrectly classified, is the result of management assigning to an employee duties and responsibilities which are of a lower classification than those that are officially assigned to him.

E. The above and other in-service placement and appointment action are listed in the Personnel Manual and Procedures retained by Human Resources Division.

History: Rule 06-98, eff. Mar. 3, 1999

11.0414 Employment of More than one Person in the same Family.

In all recruitment and placement activities, it is the policy of LBJASMC Authority that two or more members of a family may be employed within the same office as long as a spouse does not officially and immediately supervise the other. This requirement not only is applied on the basis of facts as they exist at the time of appointment but at any time while service as an employee of LBJ-ASMCA.

History: Rule 06-98, eff. Mar. 3, 1999

11.0415 Effective Dates of Actions.

The official effective date for all recruitment and placement actions, as well as other personnel actions, shall be established by the Human Resources Division except in the case of resignation, the date of which is established by the employee who is resigning. Effective dates are not made on a retroactive basis. LBJ-ASMCA division management should, therefore, make every effort to initiate personnel actions enough ahead of time to

meet the effective date requested (which may be noted under “Remarks” on the request for personnel/payroll action form). Effective dates for appointments can only be established after the pre-requisite medical, police and immigration clearance have been obtained by the Human Resource Division. Retroactive effective dates are only set when an administrative error has occurred or an appeal’s action results in retroactive corrective action.

History: Rule 06-98, eff. Mar. 3, 1999

11.0416 Classification and Pay.

In keeping with the Code of American Samoa, it is the policy of the American Samoa Medical Center Authority that the Chief Executive Officer establishes and maintains an effective classification and compensation program for all positions within the career service.

History: Rule 06-98, eff. Mar. 3, 1999

11.0417 Upgraded Level.

The classification and compensation plan provides for:

- A. The LBJ-ASMCA General Salary Schedule for other positions which is based on equal pay for equal work and qualifications.
- B. Salary range schedules including the minimum, intervening and maximum steps of each grade.
- C. Assignment of each class to a grade on a salary schedule.
- D. Provisions for regular review of the compensation schedules.
- E. Designation of each class or individual position within a class as eligible or ineligible for one and one-half times and employee’s basic salary rate for overtime as provided by the Fair Labor Standards Act.
- F. No employee to be compensated at a basic salary rate greater than the maximum nor less than the minimum step of the salary range to which has class has been allotted unless the Executive Director authorizes a different rate in cases of reallocation downward or in other cases involving unusual circumstances where equity requires a different rate of pay.

- G. The entrance salary for an employee to be the minimum salary step of the range unless the prospective employing division of LBJ-ASMCA has requested, justified in writing, and received authorization from the Chief Executive Officer for a higher entrance salary step (Section 3.4).
- H. An employee who has been reinstated as provided in these rules to be compensated at the salary step nearest the dollar amount received when separated or at the first step of the salary range, whichever is higher, unless the agency requests a different salary as provided above.

History: Rule 06-98, eff. Mar. 3, 1999

11.0418 Entrance Salary Rates.

A. Entrance salary rates for positions on the General LBJ-ASMCA Salary Schedule (See Annex A) are based on the following Policies:

- 1. LBJ-ASMCA General Salary Schedule unless the employee is being reemployed in the same class or in a directly related class for which the employee was compensated at a higher salary rate during the employee prior service and in which the employee successfully completed the required probationary period.
- 2. From grades nine to eighteen on LBJ-ASMCA General Salary Schedule, every two years of directly related education and experience beyond the minimum qualification requirements for the position for which the employee is selected shall be creditable for one-step above the minimum except that in no case shall payment exceed step five of the grade.

History: Rule 06-98, eff. Mar. 3, 1999

11.0419 Reinstatement.

Upon reinstatement, an employee with one year or more of career service may be paid at any rate within the compensation range of the position in which re-employed which does not exceed his highest previous rate. If it falls between two rates of the position in which re-employed, the employee may be paid at the higher rate. The employee may also be compensated according to (Section 3.3), if applicable.

History: Rule 06-98, eff. Mar. 3, 1999

11.0420 Periodic Step Increments.

Employees who serve under appointments without time limitation, receiving less than the maximum scheduled rates of compensation for their positions, shall receive periodic step increments successively to the next higher steps within their compensation ranges, subject to the following conditions and procedures:

A. For employees on the general salary schedules:

1. The employee's current performance evaluation is "Satisfactory" or better.
2. The employee has 52 calendar weeks of continuous paid employment (A calendar week is a total of any seven calendar days before, beginning with or after a specified day). Continuity shall not be considered to have been interrupted when the employee's services are terminated on the last day of his scheduled weekly tour of duty and his next appointment is made effective on the first day of the next scheduled weekly tour of duty. Creditable service, in the cumulating of the fifty-two (52) week waiting period includes:
 - a. Service under a temporary and/or emergency appointment.
 - b. Leave without pay not in excess of two work weeks.
 - c. Service under a part-time or when actually employed (WAE) tour of duty.
 - d. There has been no equivalent increase in compensation during the waiting period described above. An equivalent increase in compensation is defined as the total of any increase in basic compensation equal to or greater than the smallest step increment for any position in which the employee has served during the period under consideration. An increase in the rate of basic compensation resulting from an overall revision of salary shall not be considered an "equivalent increase".

- e. The increment is recommended by the employee's immediate supervisor and reviewed by the division manager before submitting to the Chief Executive Officer for final approval.
- f. A call-up control system shall be established within the Human Resources Division to determine when employees meet the waiting period requirement for step increment in compensation.

- B. When an employee's step increment is due and provided that the employee meets all other eligibility requirements therefore, Human Resources Division shall request the employee's immediate supervisor to complete the employee's official performance evaluation in accordance with (Section A. (4) above) and forward the completed evaluation to the Human Resources Division. If the performance evaluation is satisfactory or above or if no evaluation is forthcoming, the employee will automatically receive a step increment. If, however, the evaluation is unsatisfactory, a written justification explaining the rating must accompany the evaluation the Human Resources Division. If the justification is approved, the Human Resources Division shall inform the Payroll Division not to affect a step increment for the employee. The employee would not be eligible for a step increment until the completion of another 52 calendar week period.

- C. Effective dates for periodic step increments are:
1. Periodic step increments shall be made effective at the beginning of the next pay period following the completion of the required waiting conditions of eligibility described above.
 2. Any periodic step increment resulting from a retroactive corrective action shall be made effective as of the pay period in which the employee should have received the increment.

- D. When the date of promotion and the periodic step increment date coincide, the periodic increment shall be made prior to the promotional increased.

- E. An employee may appeal the performance evaluation by following the procedures as outlined in (Chapter 7).

History: Rule 06-98, eff. Mar. 3, 1999

11.0421 Promotions.

Promotion policies that are in effect such an employee on the general salary schedule shall be given an increase in compensation which is equivalent to two salary steps on the grade level of the position from which promoted. If the increase of two steps results in a salary rate falling between two steps of the new grade, the employee shall be given the higher of the two steps.

History: Rule 06-98, eff. Mar. 3, 1999

11.0422 Projection of Compensation.

Salary adjustments shall be handled as indicated below:

- A. Upon reclassification downward, the employee shall be placed in the salary step of the reclassified position which most nearly approximates the rate of compensation he was receiving prior to the downward reclassification action; however, if the salary step of the employee prior to the downward classification action falls between two steps of the reclassified position, the employee shall be placed in the higher step.
- B. Upon demotion, the employee shall be compensated according to one of these three options:
 - 1. If the demotion is a result of reduction-in-force action, maximum compensation rate protection shall be afforded as describe above.
 - 2. If the demotion is voluntary, the degree of compensation rate protection shall be determined by the Human Resources Division based on the merits of each individual case.
 - 3. If the demotion is a result of a disciplinary action, the employee shall receive the rate of compensation represented by the minimum salary step of the grade of the position to which the employee is demoted.

- C. Upon reassignment, there shall be no changed in rate of compensation except when converting from one salary schedule to another.

- D. If an employee is promoted whether as the result of reclassification of the position the employee occupies or movement from one position to another position, and employee was once in a salary step of the grade to which promoted, which was above the minimum step of such grade, the employee shall be placed in the format, unless application of the higher compensation rate is appropriate, in which case such provisions shall govern the action.

History: Rule 06-98, eff. Mar. 3, 1999

11.0423 Overtime Compensation & Compensatory Time Policy.

- A. Permanent, probationary, emergency and temporary LBJ-ASMCA employees in the Career Services in grades one through eleven on LBJASMCA General Salary Schedule are eligible to be compensated for overtime at the rate of one and one half times (1) their regular pay for all hours required to be worked in excess of eight hours in a work day, or 40 hours in a work week. The Chief Executive Officer may authorize compensatory time in lieu of overtime, and if so authorized such compensatory time will be earned at the rate of one and one half hours for each whole hour worked in this status.
- B. Permanent, probationary, emergency, and temporary LBJ-ASMCA employees in the Career Service in grades twelve through eighteen on LBJASMCA General Salary Schedule are eligible for compensatory time for any time worked beyond 40 hours in a work-week in an hour for hour basis.
- C. Contract employees may accrue compensatory time at the rate of one hour for each hour worked in excess of 40 hours in a work-week only if the Chief Executive Officer makes an advance determination that accrual of such compensatory time is in the interest of LBJ American Samoa Medical Center Authority. In no case shall compensatory time be awarded solely for the convenience of the contract employee.
- D. Compensation.

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1. All other types of employees are ineligible for either overtime pay or compensatory time.
 2. Overtime pay or compensatory time shall not be authorized for any employee who has worked less than 40 hours in a work-week.
 3. Each work-week shall stand alone and the process of averaging hours worked over two or more weeks shall not be permitted.
 4. An employee's work-week shall be 40 hours in a fixed and regularly recurring period of 168 hours in seven consecutive 24 hour periods. It need not coincide with the calendar week but may begin on any day and at any hour of the day. Once the beginning time of an employee's work-week is established, it shall remain fixed, until changed. A change intended or designed to evade the overtime requirements is prohibited.
 5. The requirement that overtime shall be paid or compensatory time provided after 8 hours a day or 40 hours a week shall not be waived by any agreement between a supervisor and an employee.
- E. "Hours worked", in general, includes all the time an employee is required to be on duty or on the LBJ-ASMCA premises or at a prescribed workplace and all time during which the employee suffered or permitted to work.
- F. Attendance at lectures, meetings, training programs and similar activities will not be counted as hours worked beyond the scheduled workday or work-week. If attendance is outside the employee's regular working hours and is required by the Chief Executive Officer, overtime or compensatory time may be awarded if otherwise applicable.
- G. Compensatory time may be accumulated in the same manner as annual leave, even though no payment can be given in lieu of compensatory time accrued but not taken.
- H. Where an eligible employee in a single work-week works at two or more different types of work for which different straight time rates have

been established his regular rate for that week for overtime purposes shall be the weighted average of such rates. That is, the employee straight time earnings from all such rates shall be added together and this total is then divided by the total number of straight time hours worked at all jobs.

- I. Employees leaving LBJ-American Samoa Medical Center Authority employment shall be compensated in cash for accumulated overtime during separation.
 1. In the event of death of an employee, the individual's accumulated overtime shall be paid to appropriate persons provided by this manual.
 2. If a function or program, together with assigned employees, is transferred from one to another division, all accumulated overtime shall also be transferred.
- J. Human Resources Division is responsible for keeping appropriate records of hours worked, leave, (earned, used, accrued, etc.) for the employees.

History: Rule 06-98, eff. Mar. 3, 1999; amd Rule 2005, eff. 5 Jan 2006.

Amendments: (b) deleted "8 hours in a work day or.."; (c) deleted "eight hours in a work day or..."; (d)(2) deleted "8 hours in a work day, or..."

11.0424 Hours of Work, Leave, and Absence from Duty.

It is recognized by the LBJ-American Samoa Medical Center Authority that maximum efficiency on the job can be obtained only by permitting employees to have time off with pay for purposes of rest, recreation and personal and family needs. LBJ-ASMCA also considers it essential to the maintenance of a stable, satisfied and productive work force, for employees to be compensated to a reasonable extent during periods of involuntary absence from duty due to physical incapacity. Finally, it is the view of LBJ-ASMCA that deserving employees, whose retention is of demonstrated value, should be guaranteed job security when it is necessary for them to be in a non-duty status, based on legitimate reasons, for periods longer than permitted under regulations governing authorized absence with pay.

History: Rule 06-98, eff. Mar. 3, 1999

11.0425 Responsibility.

- A. The Human Resources Division is responsible for the maintenance of employee leave records and furnishing advice relative to all leave records matters.
- B. The Human Resources Division is responsible for all policy matters pertaining to leave and absence from duty.

History: Rule 06-98, eff. Mar. 3, 1999.

11.0426 Hours of Work.

(Reserved)

History: Rule 06-98, eff. Mar. 3, 1999; and Rule 2005, eff. 5 Jan 2006, (deleted); marked “reserved” to preserve integrity of the numbering scheme.

11.0427 Holidays.

- A. The following public holidays are designated by statute and are paid holidays for LBJ-ASMCA employees:

New Year’s Day January 1st
Martin Luther King January 19th
President’s Day 3rd Monday in February
Good Friday Friday before Easter
Am. Samoa Flag Day April 17th
Memorial Day Last Monday in May
Independence Day (United States) July 4th
Manu’a Flag Day July 16th
Labor Day 1st Monday - September
Columbus Day 2nd Monday October
Veteran’s Day November 11th
Thanksgiving Day 3rd Thursday in November
Christmas Day December 25th

- B. If any LBJ-ASMCA employee is required to work on a public holiday, that employee shall be given either an alternative day off within the same work week with pay or an additional day’s pay in lieu of the holiday. This is equivalent to double-time pay.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000.

11.0428 Determining Holidays.

- A. When a holiday falls on one of the employee’s scheduled work days in the employee’s basic work, that day is the employee’s holiday. When a holiday falls on a day outside of the employee’s

basic work week or on a day other than a scheduled work day, the day to be treated as the employee’s holiday will depend on what day the holiday falls and what the employee’s work week is.

- B. When a holiday falls on Sunday, the employee’s holiday is Monday, if the employee’s basic work is Monday through Friday.
- C. When a holiday falls on Saturday, the employee’s holiday is Friday, if the employee’s basic work week is Monday through Friday.
- D. When an employee’s basic work week does not include Sunday and holiday falls on Sunday, the employee’s next regular work day within their basic work week is the employee’s holiday.
- E. When employee’s basic work week includes Sunday and a holiday falls on a day that has been designated as the employee’s non-work day in lieu of Sunday, the employee’s next regular work day within the basic work week is the employee’s holiday.
- F. When an employee’s basic work week includes both Sunday and Monday, either day, but not both, may be designated as the employee’s holiday.
- G. When a holiday (other than Labor Day or Thanksgiving Day) falls on an employee’s non-work day designated as in lieu of Sunday), the regular work day preceding the employee’s non-work day is their holiday.
- H. When Labor Day or Thanksgiving Day falls on an employee’s non-work day, the employee’s next regular work day within the basic work week is the employee’s holiday.

History: Rule 06-98, eff. Mar. 3, 1999

11.0429 Holidays During Leave Without Pay.

An employee who would otherwise be entitled to a holiday but who is on leave without pay will receive compensation for the holiday, provided the employee has been in pay status for ten working days during the month, not counting the holiday.

History: Rule 06-98, eff. Mar. 3, 1999

11.0430 Accrual of Leave During Pay Periods.

- A. Full bi-weekly pay period. An employee shall be considered, for leave purposes, to have been employed for a full bi-weekly pay period if the employee shall have been in a pay status, or a combination of pay status and on pay status, during all of the days within such period, exclusive of holidays and all non-work days established by the Chief Executive Officer. This may be interpreted as follows:
- B. Fractional Pay Periods – If employment is continuous, leave is credited on a pro rata basis for those days during a fractional pay period for which an employee is being paid. The following table may be used to determine the of prorated leave credit:
- C. Accrual Reduction Because of Non-Pay Absence: When an employee’s absence in a non-pay status totals the hours for one of the employee’s pay periods, their sick leave credit is reduced by one-half day and the individual’s annual leave credit is reduced by either one-half, three fourths, or a full day depending on the employee’s leave-earning category. If the employee is in a non-pay status for a full year, the employee earns no leave.
- D. Leave Charges:
 - 1. Leave Days: Both annual and sick leave are charged to an employee’s account only for absence on regular work days, i.e., days on which the employee would otherwise work and receive pay during their regular tour of duty. Leave is not charged for absence on days for which premium pay would be paid, holidays, or other non-work days.
 - 2. Minimum Charge: One half hour is the minimum charge for either annual or sick leave. After one half hour, additional charges may be made in multiples of one half hour; absences of different days are not combined.
 - 3. If an employee is tardy or unavoidably or necessarily absent from duty for less than one half hour, the employee may be charged one half hour to annual leave.

- 4. When an employee is charged with leave for unauthorized absence or tardiness, the employee may not be required to perform work for any part of the leave period charged against their account.
- 5. When an employee is absent without official leave, fails to report for duty without prior approval or does not have an acceptable excuse for absence, the employee shall be charged for absence without leave (AWOL) and not paid for such time.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0431 Annual Leave.

- A. Such leave is authorized absence from duty with pay to allow employees an annual vacation period for rest and relaxation and to provide time off for personal and emergency purposes. Earning rate for full-time employees is:
 - 1. Employees with less than three years of creditable service earn four (4) hours or one-half work day of annual leave for each bi-weekly pay period.
 - 2. Employees with three but less than 15 years of creditable service earn six hours or three-fourths work day of annual except for the last full pay period of the year for which they earn then hours of annual leave.
- B. Earning Rate for Intermittent (When Actually Employed) and Part-Time Employees:
 - 1. Employees with less than three years of creditable service earn one hour of annual leave for each 20 hours in a pay status.
 - 2. Employees with three but less than 15 years of creditable service earn one hour of annual leave for each 13 hours in a pay status.
 - 3. Employees with 15 or more years of creditable service earn one hour of annual leave for each ten hours in a pay status.
- C. Determination of Creditable Service: The following service is creditable:

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1. All time spent in the career service of the American Samoa Government.
 2. All active duty service in the Armed Forces of the United States, except that of an employee who is retired member of any of the uniformed services in which case such active duty military service is not creditable unless:
 - a. Retirement was due to disability:
 - i. Resulting from an injury incurred in time of duty as a direct result of armed conflict or
 - ii. Caused by an instrumentality of war incurred during a period of war, as defined in (Sections 101 and 301 of Title 33, U.S. Code) or
 - iii. Immediately prior to the effective date of the provisions of (Chapter 23, Title XXIII, the Merit System Law), Revised Code of American Samoa, the employee was employed in a civilian office to which the Annual and Sick Leave Act of the United States applies and, on or after such date, the employee continued to employed in any such office without a break in service of more than 30 days or such service was performed in the Armed Forces of the United States during any way or in any campaign or expedition for which a campaign badge has been authorized.
- D. Qualifying Period – An employee must be employed for 90 calendar days without a break in service before the individual is qualified to earn annual leave. At the end of the 90 day period, annual leave that has been earned is credited to the employee’s account. A break in service in one day or more when the employee is not on the employment rolls of the LBJ-ASMC. An employee on their first permanent appointment may use no annual leave but may be granted sick leave or leave without pay until the 90 day period is completed. Persons who are re-employed must service a new qualifying period. They may, however, use any annual leave earned under a previous appointment which had been credited upon completion of 90 day qualifying period.
- E. Maximum Accumulation – Accumulation of unused accrued annual leave may not exceed a total of 60 days at the beginning of the first complete pay period of each leave year.
 - F. Lump-Sum Payments for Annual Leave:
 1. Entitlement – An employee who has annual leave to his credit and who is separated from his employment with the LBJ American Samoa Medical Center Authority is entitled to payment of accumulated, accrued annual leave in a lump-sum.
 2. Computation of Payment – Lump sum leave payments are equal to the compensation that the employee would have received had the employee remained in the employment of the LBJ American Samoa Medical Center Authority until the expiration of the period of annual leave paid. Included are pay for holidays falling within that period to which the employee would have been entitled. The employee does not, however, earn leave during the period represented by the lump-sum payment. Except for purposes of taxation, the lump-sum is not regarded as salary or compensation.
 - G. Granting Annual Leave – Annual leave is a privilege, not a right, and is granted at the convenience of LBJ-ASMCA. Supervisors should make every effort, however, to insure that their employees do not lose accrued leave in excess of the 60 day limitation which cannot be carried forward into succeeding leave years.
 1. Authority to Grant Annual Leave – Annual leave may be granted (approved) by Chief Executive Officer and other operating officials authorized to certify bi-weekly time sheets.
 2. Procedure for Granting Annual Leave – Procedure for Granting Annual leave – LBJ-ASMC Form 329, Leave Request, shall be utilized for requesting and

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approving annual leave. This form shall be submitted to the Human Resources Division concurrent with the submission of the bi-weekly time sheets covering the pay period immediately preceding the pay period in which the requested leave will fall.

- H. Annual Leave in Lieu of Sick – Approved absence, otherwise chargeable to sick leave may be charged to annual leave when sickness exceeds accumulated sick leave hours. However, substitution of annual leave for sick leave previously granted may not be made retroactive for the sole purpose of avoiding forfeitures of annual leave at the end of the leave year.
- I. Advancing Annual Leave – It is not permissible for an employee to be granted annual leave in advance of its having been earned.
- J. Annual leave shall always be applied for in advance of approved absence for which it is to be applied.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0432 Sick Leave.

- A. Absence of an employee from duty with pay when the employee is physically incapacitated to do his job or for related reasons is known as sick leave. Sick leave may also be used by an employee to avoid his exposure of a contagious disease to co-workers or when the presence of contagious disease in an employee's immediate family requires the employee's personal care, or for dental, optical or medical examinations or treatment.
- B. Earning Rate for Full-time Employees: Employees earn sick leave at the rate of four-hour or one-half workday for each full-bi-weekly pay period sick leave is earned from the first pay period of employment. There is no qualifying period for the earning of sick leave.
- C. Earning Rate for Intermittent and/or Part-Time Employees: These employees earn sick leave at the rate described under the Category Column of the Pro Rate Table.

- D. Crediting of Sick Leave: Sick leave may be credited to an employee's account at the beginning of the pay period in which it is earned.
- E. Maximum Accumulation: Unused sick leave is accumulated without limit.
- F. Granting of Sick Leave: Sick leave is a right, provided the requirements of this sub-section are met. LBJ-ASMCA officials have the authority and responsibility to determine that the nature of the employee's illness was such as to incapacitate the employee from their job and that other reasons for which sick leave is granted are valid. It is mandatory that an employee furnish documentary evidence in the form of a medical certificate for periods of sick leave in excess of three continuous work days. However, management may require that the employee furnish such certificate for sick certificate for sick leave involving any length of time. The employee who becomes ill is responsible for notifying his supervisor as soon as possible. Required medical certificates shall be submitted together with leave request forms and time sheets as specified by the above reference.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0433 Leave Without Pay.

- A. Leave without pay is a temporary absence from duty in non-pay status granted upon the employee's request and at the discretion of management. It does not include non-pay status on days for which the employee would receive premium pay and does not include days on which the employee is not scheduled to work. The permissive nature of leave without pay distinguishes it from absence without leave (AWOL), which is a non-pay status resulting from a period of absence for which the employee did not obtain advance authorization or for which the request for leave has been denied – (Section 4.9). It shall be the practice of the LBJ American Samoa Medical Center Authority to grant leave without pay only when it will be of mutual benefit and interest to LBJ-ASMCA and to the employee. Leave without pay shall not be granted for the purpose of an employee participating in private employment.

- B. Limitations and Standards – The maximum time limitation for leave without pay is one year. It shall be granted beyond 30 days for non-disqualifying serious illness or disability, pregnancy, job-related education or training or other valid reasons.
- C. Granting Leave without Pay.
 - 1. Authority – Leave without pay, which does exceed 30 days may be granted by the Chief Executive Officer or other operating official who have been authorized to certify by-weekly time sheets. Periods of leave without pay in excess of 30 days must be approved by the Chief Executive Officer.
 - 2. Procedure – LBJ-ASMCA Form 303 shall be initiated to document periods of leave without pay in excess of two weeks.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0434 Maternity Leave.

- A. Maternity leave, a period of approved absence for incapacitation related to pregnancy an confinement, is chargeable to sick leave or any combination sick leave, annual leave, and leave without pay in the order given.
- B. Employees Responsibility – Employees are required to request maternity leave substantially in advance of their intended absence so that prior staffing adjustments may be made.
- C. Periods of maternity leave shall be based on individual medical determination. The usual period of authorized maternity leave is approximately 12 weeks but it can vary among individuals. However, the decision of the Chief Executive Officer or other authorized operating official to permit an employee to work up to less than eight weeks before the expected date of delivery shall be made only after consultation with the employee or the Medical Director or the representative.
- D. Responsibility of Management – When there is any reservation regarding the physical ability of a pregnant employee to perform their duties without hazard to their health, the Chief Executive Officer or other cognizant authorized operating official shall request the employee to furnish a medical certificate. An employee whose incapacitation for performance of duty is certified for a period commencing earlier than eight weeks before the expected date of delivery or extending shall also be required to furnish a medical certificate to the supervisor when their physical condition may become affected by her work.
- E. Granting Maternity Leave Beyond the Usual Period – If the employee at the end of their maternity leave, is physically incapacitated for return to duty, sick leave (within the amount available), annual leave (within the amount available), or leave without pay may be granted upon receipt of certification of the need therefore by attending physician or practitioner. Such additional leave shall be granted strictly on a discretionary basis after careful consideration of the work requirements of the affected position, even to the point of ascertaining the need for continuance of the job.
- F. Control of Sick Leave Grants for Maternity – Chief Executive Officer and other authorized operating officials shall require proper medical certification for each day of incapacitation due to pregnancy or confinement for which sick leave is granted. This certification shall be obtained in advance and be considered adequate justification for absence chargeable to sick leave. Absence not medically certified to be due to incapacitation for performance of duty, whether it occurs before or after deliver, shall be charged to annual leave if available, or upon the request of the employee, to leave without pay.
- G. Investigation of Working Conditions of Pregnant Employees – Pregnant employees should not be used in occupations that involve heavy lifting or other work which requires continuous standing or moving about, neither should they be employed during pregnancy in work involving exposure to toxic substances that exert an injurious effect upon the blood-forming organs, the liver or the kidneys. When the Chief Executive Officer or other authorized operating official finds that the duties of the pregnant employee require activity or exposure which may be injurious to their health or the health of

the unborn child, every reasonable effort shall be made to temporarily reassign the employee to other available non-injurious work for which the employee is qualified. The objective is to provide the employee with gainful employment and to make use of the employee skills for as long as the employee is not incapacitated for duty. If another assignment is not available and a medical certificate of the employee's incapacitation for the duties of the employee regular position is received, shall be placed on leave immediately.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0435 Military Leave.

- A. General Provisions – a full-time employee who serves under an appointment without time limitations and who is a member of a reserve component of the Armed Forces of the United States, the U.S. Pacific Health Service or the National Guard, is entitled to leave of absence for annual military training without charge to annual leave loss of pay or service credit for not more than 15 calendar days in any calendar year. The reserve components of the Armed Forces include the reserves of the Army, Navy, Air Force, Coast Guard and Marine Corps. The National Guard includes the National Guard of the Army and of the Air Force. Excluded is such service as:
1. Summer training as member of the Reserve Officers Training Corps.
 2. Temporary Coast Guard Reserve.
 3. Participation in parades by member of a State or Territorial guard.
 4. Training with a State or Territorial guard or other State or Territorial military organization.
 5. Civil Air Patrol.
- B. Maximum Military Leave – Military leave is limited to a maximum of 15 calendar days during each year, regardless of number of training periods in a year, and whether taken intermittently, a day at a time or all at one time.
- C. Computation – Non-work days falling within a period of absence while on military training duty are charged against the 15 days of military leave allowed during a year but not non-work days at the beginning or end of the period.
- D. Use of Annual Leave – Absence which is not chargeable to military leave can be charged to annual leave. Therefore, employees who are called to duty for a period longer than the 15 day period chargeable to military leave can use annual leave for the additional absence.
- E. When Granted – When a single period of training extends from one calendar year into the next year, an employee is limited to 15 calendar days for that training period. When an employee has been granted the maximum 15 days allowed during the year and is ordered to a second period of training duty which extends into the next year, the employee may be granted military leave beginning on the first day of the new year. There is no requirement that the active duty be considered as military leave. If circumstances in any particular case warrant, any other 15-day period may be designated as military leave.
- F. Pay Status Requirement – Generally, a pay status either immediately prior to the beginning of military duty or a return to pay status immediately afterward is a requisite to entitlement to military leave with pay as, otherwise, no pay would have been lost.
- G. Relationship to Annual Leave – When an employee on an annual leave status is called to military training duty, military leave is regarded as having interrupted his annual leave status which may be resumed upon the expiration of his military leave.
- H. Documentation – When an employee completes their military duty, the employee shall present to their supervisor a copy of the orders to such duty indicating its date of completion. These orders shall be submitted to the Human Resources Division. Unless this would ordinarily have been granted to the employee as military leave will be charged to annual leave or leave without pay.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0436 Court Leave.

- A. Court leave is authorized absence, without charge to annual leave or loss of pay or service credit, from official duty for attending court in a non-official capacity as a witness in behalf of the American Samoa Government or the LBJ American Samoa Medical Center Authority. If an employee is on annual leave when called to testify as a witness as described above, a court leave should be substituted. No exception will be made for annual leave that would otherwise be forfeited at the end of leave year. An employee who is on annual leave under advance notice of separation from LBJ-ASMCA is entitled to have proper court leave substituted for annual leave but not to extend beyond the date administratively fixed for this separation.
- B. Pay Status Requirement – An employee who requests court leave is subject to the same pay status requirement provisions as those which apply to military leave – (Section 412 F).
- C. Witness in Official Capacity – When an employee is called as a court witness in an official capacity, whether on behalf of ASG, LBJ-ASMCA, or of a private party, the employee is considered to be in an official duty status and is entitled to receive regular compensation without regard to any leave regulation.
- D. Expiration of Court Leave – When an employee is excused by the court and there remains in that work day at least two hours, it is expected that the employee will return to the place of work unless the return would be spend mostly in travel. If an employee does not return to work when there is sufficient time remaining in the work day to do so, the employee shall be charged with annual leave for the period of time the employee should have worked after having been released by the court.
- E. Documentation – All absences that are chargeable to court leave shall be documented and processed in accordance with the provisions of the Chapter above and copies of summons and evidence of appearance shall accompany leave request slips.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0437 Excused Absence.

- A. Excused is absence from duty, duly authorized by the Chief Executive Officer, without charge to annual leave or loss of pay of service credit under the circumstances described below.
- B. Groups of employees may be excused from duty to:
 - 1. Take an employment examination for a position currently occupied or one to which the employee may be promoted or reassigned, not to exceed three hours.
 - 2. Take a physical examination required to determine continued employability.
 - 3. Obtain treatment for an injury sustained in the performance of duty. The employee may be excused for the balance of the day on which the injury occurred.
 - 4. Donate blood to the American Red Cross in American Samoa or in an emergencies to individuals for the time necessary for such donations, not to exceed four hours, provided that the employee does not receive pay for blood.
 - 5. Participate in emergency rescue or protective work under the same provisions as contained in (Section 4113S).
 - 6. Participate in Federally recognized civil defense programs for a reasonable length of time up to 40 hours in a calendar year.
 - 7. Vote and register. An employee who desires to vote or register in an election or in a referendum on a civic matter in the community may be granted time off without loss in pay or service credit or charge to leave, as follows:
 - a. When the polls are not open for at least two hours either before or after the employee's regular working hours, employee may be allowed two hours of excused absence after the polls open or two hours before the polls close,

whichever requires the lesser amount of time.

- b. An employee may be excused for such additional time as may be needed to enable the employee to vote, depending upon the circumstances in the individual case but not to exceed a half day, time off in excess of a half day shall be charged to annual leave or, if annual leave is exhausted, to leave without pay.
- c. An employee who votes in a jurisdiction which requires registration in person may be granted time off to register substantially on the same basis as for voting except that no such time shall be granted if registration can be accomplished on a non-work day and the place of registration is within reasonable one-day, roundtrip travel distance of the employee's place of residence.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0438 Administrative Leave.

- A. Administrative leave is proclaimed by the Governor and is for such purposes as national days of mourning, natural disasters, power failure, etc. Only the Governor is authorized to grant administrative leave.
- B. Administrative leave hours are paid, non-work hours for LBJ-ASMCA employees.
- C. If an LBJ-ASMCA employee is required to work on a day that has been proclaimed for most employees to be a non-work day, employee shall be given either one extra day of straight-time pay or a alternative day off within the same week.
- D. Administrative leave may be used when:
 1. Normal work operations are interrupted by events or emergencies that are beyond the control of management or employees, such as extreme weather conditions, serious interruptions in public transportation services except as the result of a strike, disasters or other conditions preventing

employees from working or reporting to work.

2. The office or project must be closed for short periods, usually one day or less but not to exceed three days, for making repairs, retooling, power failure or other managerial reasons but for longer periods, annual leave or leave without pay shall be scheduled.
3. It is in the interest of the LBJ-ASMCA to relieve employees from work to take part in activities in which LBJ-ASMCA participates, providing employees can be spared without detriment to the work and when those activities do not require the closing down of LBJ-ASMCA function or project, the employment of relief workers or the payment of overtime.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0439 Unauthorized Absence.

Unauthorized absence shall be treated as absence without pay and may be grounds for disciplinary action. Upon return to duty, the employee shall give a written statement to the appointing authority explaining the reason for his absence.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0440 Conduct of LBJ-ASMCA Employees.

- A. It is the policy of LBJ-ASMC to urge its career service employees and contract specialists to cultivate those personal qualities which characterize a good employee's loyalty to the American Samoa Government and the LBJ-American Samoa Medical Center Authority; a sense of responsibility for the public trust, and a standard of personal deportment which is a credit to the individual himself and to LBJ-ASMCA. Off-the-job conduct is of concern to LBJ-ASMCA if it reflects adversely upon the dignity, integrity and prestige of LBJ-ASMCA service.
- B. Misconduct – Any criminal, dishonest, immoral or any other conduct on the part of an employee which would adversely affect LBJ-American Samoa Medical Center Authority. Gambling or the use of alcoholic beverages by employees in public buildings, construction sites or offices

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administered by LBJ-ASMCA will not be tolerated. Disciplinary action will be taken for the breach of this section.

- C. Subordination to Authority – An employee is required to carry out the announced policies and programs of LBJ-ASMCA. While policies related to the employee’s work are under consideration, the individual may and is expected to express their opinions and points of view; but, once a decision has been rendered by those in authority, the employee will be expected unreservedly to assure the success of programs which it is the responsibility to effectuate. If the employee’s performance, the employee is subject to appropriate disciplinary action.
- D. Selling or Soliciting – Employees and other persons are prohibited from selling or soliciting for personal gain within an LBJ-ASMCA without proper permission. This prohibition does not apply to:
 - 1. authorized and installed business activities, e.g., employee cafeterias, etc.
 - 2. Solicitation for other approved purposes and:
 - 3. Token solicitations for floral remembrances, retirement gifts and for similar purposes.
- E. Outside Business Activity – An employee shall not engage in any business activity, either in the capacity of employee or otherwise which contravenes the American Samoa Medical Center Authority regulations of conflict of interest or is inconsistent with LBJ-ASMCA policies concerning outside employment as separately treated in (Section 5.1U)
- F. Community and Professional Activities – Employees are encouraged to encouraged to participate in activities of professional societies and of civic organizations whose purpose and objectives are not inconsistent with those of the American Samoa Medical Center Authority.
- G. LBJ-ASMCA Property – Employees shall be held accountable for LBJ-ASMCA property and moneys entrusted to their official duties. It is their responsibility to protect and safeguard LBJ-ASMCA property and to use them economically and for official purposes only.
- H. Gifts – An employee shall not accept from or bestow upon any person or organization with which deals officially anything of economic value, such as a gift, loan or gratuitous service. No employee shall solicit or make a contribution for a gift for a superior officials, except as specifically authorized by law or as cited under (Section C. (3)). Except as specifically authorized by law, employees are not authorized to accept from private sources on behalf of the American Samoa Government or of the LBJ American Samoa Medical Center Authority voluntary donations or cash contributions for travel expenses or the furnishing of services in kind, such as hotel accommodations, meals and travel accommodations.
- I. Information – It is the policy of the LBJ American Samoa Medical Center Authority to accord the public free access to information about its activities. Guidelines for release of information may be obtained from the Attorney General’s Office. Employees should confine statements made in their official capacity to factual matters and statements on policies and programs should be limited to those policies and programs already on record. If an employee is requested to give information outside the scope of authority, the employee should refer the request through the immediate supervisor or to the Chief Executive Officer.
- J. Equal Government Employment Opportunity Policy – All personnel actions taken regarding career service and contract specialist employees shall be based solely on merit and fitness, and entirely without regard to race, color, religion, national origin, sex, age and physical disability. However, where positions can be filled locally, preference will be given to permanent residents of American Samoa. Any regulation or order of conflict with this Section is hereby rescinded.
- K. An employee may not knowingly advocate the overthrow of our constitutional for of government through membership in any organization which asserts the right to strike against the American Samoa Government, or the

LBJ American Samoa Medical Center Authority.

- L. Political Affiliation – No person in the Executive Branch with authority to take or recommend a personnel action relative to a person in, or an eligible applicant for, a position in LBJ-ASMCA service, may make inquiry concerning the employee’s political affiliation, all disclosures concerning political affiliation shall be ignored, except membership in political parties or organizations constituted by law as a disqualification for LBJ-ASMCA employment.
- M. Political Activity – It shall be unlawful for an employee of the LBJ-American Samoa Medical Center Authority to actively participate in the management of a political campaign, unless such employee is a candidate and has taken a leave of absence from LBJ-ASMCA employment for the purpose of conducting the campaign.
1. Section 1411 of the Code permits: “...leave without pay shall be freely granted to any LBJ-ASMCA employee for the purpose of campaigning as a candidate for public office in American Samoa for a period beginning 30 days before and ending 10 days after the date set for election.
 2. The employee must take leave of absence prior to taking any active part in the management of a campaign.
 3. The U.S. Civil Service Commission has ruled that the phrase, “active part in political management” includes not only candidacy, but also political activity prior to the announcement of actual candidacy, and the ruling services as a guide to the interpretation of the essentially identical phrase in Section 1511 of the Code.
 4. Thus, it is the opinion of the Attorney General’s Office that an employee of LBJ American Samoa Medical Center Authority must take a leave of absence upon announcement of candidacy for, or filing as a candidate for political office. The employee must take a leave of absence prior to such announcement or filing if intends to enter into political activity prior to such announcement or filing.
5. The leave of absence may be taken as accrued annual leave, leave without pay or a combination of the two. In the event the employee does not desire to take annual leave, LBJ American Samoa Medical Center Authority in accordance with the Code is obligated to freely grant leave without pay to a candidate for the period of 30 days prior to, and 10 days after election. Leave without pay for longer period may be granted at the discretion of the Chief Executive Officer, according to the needs and convenience of the LBJ American Samoa Medical Center Authority.
 6. Under no circumstance may an employee participate in their campaign, or direct or encourage others to do so, until the employee has actually begun the leave period.
 7. According to the Attorney General’s Office, the word “employee” as used in the Code for this purpose refers to all persons employed by the American Samoa Government and the LBJ-American Samoa Medical Center Authority and not confined to members of the career service. Though the section now appears under “career service (Title 3) in the 1973 compilation of the Code, it was not originally enacted as part of the career service and there was not intent on the part of the Legislature to restrict the application of the statute to career service employees. An attempt to confine the meaning of the word employee to “career service” would render the standards of campaign conduct unenforceable as to an important segment of LBJ-ASMCA employees, as “career service” is much narrower in meaning than “employee”.
 8. “The career service shall include all employees of ASG and LBJ-ASMCA except contract Federal employees, district, county and village officials, members and

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employees of the Legislature and Judges”.
(Section 1203 of the Code).

9. The broader use of the word employee not only carries out the clear intent of Legislature, but it is in keeping with U.S. Civil Service commission decisions.

10. Act interdicts partisan political activity and covers all Federal officers and employees whether in the classified civil service or not.

11. The penalty (Section 1511 of the Code) contained in – Section (1) indicates the legislative intent to include both officers and employees within the purview of the political activities control law.

N. Any officer or employee of the LBJ American Samoa Medical Centers Authority who violates this section shall be subject to severe disciplinary action up to including termination.

O. Employee involvement in the campaign of others – The Code absolutely prohibits an employee of the American Samoa Government or the LBJ American Samoa Medical Centers Authority from actively participating in the management of the campaign of another.

P. In keeping with the Code of American Samoa, as LBJ-ASMCA employee who is NOT a candidate for Office.

MAY

- Register and vote in any election
- Express his/her opinion as an individual both privately and publicly on political subjects and candidates
- Display a political picture, sticker, badge or button
- Attend a party, rally, fund-raising function or other gathering on behalf of a candidate
- Sign a political petition as individual
- Make a financial contribution to a political organization or candidate
- Participate in parades and rallies for a candidate as an individual

MAY NOT

- Serve as an officer or member of a committee, organization or club for the election a candidate
- Be involved in organizing election activities for a candidate or employee’s supporters.
- Directly or indirectly solicit, receive, handle, disburse of account for assessments, contributions or other funds for a candidate.
- Organize, sell tickets, promote or actively participate in a fund-raising activity for a candidate.
- Participate in the organization of any activity designed to solicit votes in support of any candidate.
- The prohibition contained in the foregoing apply whether the employee is on annual leave or leave-without-pay.
- It is impossible to anticipate all circumstances that may arise in the course of an election, and the situations cited above are designed to serve as examples.
- Questions as to specific situations not covered by the above should be directed to the Attorney General’s Office.
- Budget Estimates and Legislation – LBJ-ASMCA Employees are required to refrain from promoting legislation relating to programs of LBJ-ASMCA which do not have the official sanction of the proper LBJ-ASMCA authority. It should be clearly understood, however, that nothing in this policy is to be considered as restraining or interfering with the obligation of employees to respond freely and candidly to any inquiries made of them in regard to appropriations or related matters of the Legislature of American Samoa.
- Financial Responsibility – Employees of LBJ-ASMCA are expected to satisfy their financial commitments. Failure to meet one’s obligations reflects adversely on one’s standing as an LBJ-ASMCA employee.

- Contracts with Employees – Because contracts with its own employees are considered to be against public policy such contracts are not permitted in LBJ-ASMCA, except where it is clearly shown that the interests of LBJ-ASMCA are major consideration to be served thereby. The only announced exception to this policy concerns sales of certain types of surplus property to employees under competitive conditions as set for by regulations promulgated by the LBJ-American Samoa Medical Centers Authority.

- G. Financial Interests – LBJ-ASMCA Employees may not have direct or indirect financial interests that conflict substantially, or appear to conflict substantially with their responsibilities and duties as employees nor engage in, directly or indirectly financial transactions as a result of, or primarily relying upon, information obtained through their employment. Aside from these restrictions, LBJ-ASMCA employees are free to engage in lawful financial transactions to the same extent as private citizens.
- H. Outside Work – Outside work is permitted to the extent that it does not prevent an employee from devoting his primary interests, Talents, and energies to the accomplishment of the work LBJ-ASMCA or tend to create a conflict between the private interests of an employee and official responsibilities.
- I. Outside work shall not interfere with the performance of, or impair the ability of the employee to satisfactorily perform the employee’s official duties. Among other things, abuse of leave privileges to engage in outside work shall be treated as an interference with official performance of the employee’s duties and will not be tolerated by LBJ-ASMCA.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0441 Separation and Adverse Actions.

It is the policy of the LBJ-American Samoa Medical Center Authority to insure that employees who are unfit or undesirable shall be removed from their position promptly; that those who are guilty of

misconduct not sufficiently serious to justify removal, be properly disciplined; that involuntary separations be handled in an orderly manner; and that absolute fairness and protection of employees against arbitrary or capricious action be guaranteed.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0442 Voluntary Separation.

- A. Resignation – An employee has the right to resign at any time the employee wishes to do so but is expected to afford management a reasonable period of advance notice, which generally is considered to be two weeks. All resignations must be in writing. A request for Personnel Payroll shall be prepared and other appropriate forms shall be completed as directed by Human Resources Manager in order to effect the resignation. In all cases, a copy of the written resignation must accompany the Notice of Official Personnel Action (LBJ-ASMCA Form 303).
- B. Resignation in Lieu of Separation for Cause – As indicated in (Section 6.2 A.), an employee may resign at any time; this includes voluntary separation in lieu of removal or while issuance of charges leading to removal is pending. In such instances, operating officials must indicate the abnormal nature of the resignation on the Notice of Official Personnel Action (LBJ-ASMCA Form 303);
- C. Withdrawal or Resignation – Once submitted, an employee may withdraw his resignation only at the discretion of the Chief Executive Officer.
- D. Rehire – An employee who resigns is eligible for reinstatement at any time if individual has completed the probationary period. If the individual has not completed the probationary period or if, within the five years preceding the date of their current application the individual resigned from the American Samoa Medical Center Authority in lieu of removal, the individual must re-compete through regular competitive procedures.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0443 Involuntary Separation.

A. Temporary Employees.

1. Employees who are serving under appointment with a time limitation may be separated at any time without prior notice or right of appeal except in cases where the employee considers the separation due to an alleged discrimination. Procedures for filing of an alleged discrimination are contained in (Section 7.2).
2. Separation of temporary employees shall be requested by supervisors or other authorized operating officials via the Notice of Official Personnel Action (LBJ-ASMCA Form 303).

B. Probationary Employees

1. Employees serving the one-year probationary period may be separated at any time during such period upon proper recommendation and written notice, without right of appeal.
2. Supervisors shall carefully observe the performance and conduct of employees who are serving the probationary period to determine whether the retention of such employees is in the best interests of the LBJ American Samoa Medical Centers Authority.
3. Two months prior to the expiration of an employee's probationary period, the Human Resources Division shall request the Chief Executive Officer and the employee's immediate supervisor for a recommendation as to retention of the employee. If retention is not recommended, and the employee's immediate supervisor shall advise the Human Resources Division in writing. Upon receipt of the written justification, the Human Resources Division shall, provided the stated reasons are valid and clearly set forth, proceed with the separation actions as follows:
 - a. Issue a written notice to the employee advising that the separation will be effective on this particular date, the reason(s), therefore, and that the right

to appeal is not necessary, except in cases of alleged discrimination.

- b. Finally process of the separation in accordance with instructions applying within the Human Resources Division only, including issuance of a Notice of Official Personnel Action (LBJ-ASMCA Form 303).

C. Permanent Employees.

1. Except under drastic circumstances, the separation for cause or removal of an employee serving under an appointment without a time limitation, who has completed the one (1) year probationary period, should be preceded by adequate documentation in the form of warnings and/or reprimands which are a matter of written record.
2. Removal may be effected for any of the reasons referred to in this Manual, such as violation of standards of employee conduct.
3. Removal shall be recommended to the Chief Executive Officer by the employee's Supervisor in writing, supported by a written account of the circumstances and events underlying the recommendation.
4. Upon receipt of the written justification recommending the removal of an employee, the Chief Executive Officer shall give careful consideration to such recommendation and all background information of record. In this connection the Chief Executive Officer is expected to consult with the recommending operating official concerned.
5. If the Executive Director considers the recommending official's request reasonable, the Human Resources Manager shall advise the employee in writing of the removal action to take effect thirty (30) calendar days from the date of the notice, the reasons therefore, and that the employee may request a hearing before the Board within ten (10) calendar working days from the date the employee receives the notice.

6. If the employee does not appeal or if the employee appeals and the appeal is denied, the employee's removal shall be processed finally in accordance with instructions applying within the Human Resources Division only, including issuance of a Notice of Official Personnel Action (LBJ-ASMCA Form 303).
7. The employee will normally be retained in an active duty status during the 30-day notice period. However, if the circumstances are such that retention of the employee in an active duty status in the employee's position may result in damage to LBJ-ASMCA property or may be detrimental to the interest of LBJ-ASMCA or injurious to the employee, fellow workers or the general public, the employee may be:
 - a. Temporarily assigned duties in which these conditions will not exist.
 - b. Placed on annual leave with his consent.
 - c. Suspended pending the expiration of the 30-day notice period. The suspension is a separate adverse action and will be effected by a separate notice to the employee. The specific reasons for not retaining the employee in an active duty status during the notice period must be included in the notice of suspension and approved by the Chief Executive Officer prior to implementation.

History: Rule 05-2000, eff. Sept. 25, 2000; amd. Rule 2005, eff. 5 Jan 2006.

11.0444 Demotion.

Any personnel action resulting in the reduction in compensation or grade of an employee constitutes a demotion.

- A. Voluntary Demotion – In order for a demotion to be voluntary, it must be requested in writing by the employee concerned without promoting or coercion. Such requests shall be directed to the Human Resources Division together with a

request for a Notice of Official Personnel Action (LBJ-ASMCA Form 303).

B. Involuntary Demotion

1. Disciplinary.

- a. Permanent Employees – Such actions are subject to the provisions of (Section 6.3 C. (1)).
- b. Temporary and Probationary Employees – Such employees may be demoted without notice or appeal rights except in cases of alleged discriminations.

- C. Reclassification Downward – All employees whose positions are reclassified downward shall receive 30 days advance written notice of such action which shall also advise them of their right of appeal in accordance with the provision of (Chapter 3) of this Manual. Final processing shall be effected in accordance with instructions applying within the Human Resources Division only, including issuance of a Notice of Official Personnel Action (LBJ-ASMCA Form 303).

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0445 Suspension.

- A. Any employee serving under an appointment without a time limitation, regardless of whether the individual has completed the one-year probationary period, may be suspended from duty without pay for a period not to exceed 30 calendar days as a less severe disciplinary measure than removal, as provided below;
- B. Preliminary Investigation – Before action is taken against an employee, the supervisor having authority to propose such action, or a designated representative, shall make such inquiry or investigation as consider necessary to assure the facts in the case.
- C. Discussion with Employee – When investigation, indicates that action should be taken, the Chief Executive Officer shall hold an informal hearing with the employee. At the outset the employee should be advised of the contemplated penalty, the specific instances of

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misconduct, dereliction of duty, or other reasons for contemplated action and of individual’s right to reply. The employee shall be permitted to present their side of the case. The employee shall be advised of the decision at the conclusion of the hearing, if practicable. Only the Chief Executive Officer shall conduct these hearings.

- D. Decision – If the decision is made to initiate disciplinary action, suspension shall be recommended by the employee’s immediate supervisor to the Chief Executive Officer or by the Chief Executive Officer, in writing supported by an account of the circumstances and events underlying the recommendation including reference to the date of the hearing and name of participants.
- E. Action by the Chief Executive Officer.
 - 1. Upon receipt of the request recommending suspension of an employee and, if the reasons therefore are considered valid, the Chief Executive Officer shall furnish the employee with advance written notice – advising the individual of the specific dates of the suspension, the reasons therefore, corrective action employee. Before action is taken against an employee, the supervisor having the authority to propose or effect such action or the designated representative shall make such inquiry or investigation is consider necessary to assure of the facts in the case.
 - 2. Discussion with Employee – When investigation to be taken by the employee and what the consequences will be if the individual fails to do so or if there is a repetition of the causes of the suspension.
 - 3. The employee may be placed in a non-duty status with pay for such time, not to exceed five days, as is necessary to effect the suspension.
 - 4. The suspension action shall be processed finally in accordance with instructions applying within the Human Resources Division only, including issuance of a Notice of Official Personnel Action (LBJ-ASMCA Form 303).

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0446 Letter of Reprimand.

- A. Authority and Preliminary Investigation – Letters of Reprimand may be issued by first line supervisors. The following procedure shall be used when it is proposed to issue a letter of reprimand to any indicates that action should be taken, the supervisor shall hold an informal discussion with the employee. At the outset of this discussion, the employee shall be advised of the contemplated penalty, the specific instances of misconduct, dereliction of duty, or other reasons for the contemplated action and of his right of replay. The employee shall be permitted to present his side of the case. The employee shall be advised of the decision at the conclusion of the discussion, if this is practicable. Human Resources Manager or staff shall be involved in these discussions.
- B. Decision – If the decision is made take disciplinary action, the letter of reprimand shall reference the discussion held and shall cite the specific reasons for the action to be taken.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0447 Involuntary Reassignment.

- A. When the Chief Executive Officer concurs with the supervisor’s recommendation, any employee may be moved involuntarily from one position to another, which may or may not involve a change in line of work, without reference to any of the protective provisions described, provided no reduction in grade or rate of compensation is involved.
- B. An involuntary reassignment is actually an “administrative assignment” with the best interests of the LBJ-American Samoa Medical Centers Authority as the primary objective.
- C. Failure of an employee to comply with an involuntary (administrative) reassignment shall result in the employee’s immediate separation.
- D. All recommendations and final processing of involuntary reassignments are effected by the use of a Notice of Official Personnel Action (LBJ-ASMCA Form 303).

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0448 Abandonment of Position

- A. When an employee fails to report for duty or to return from leave for five or more consecutive work days, the employee may be considered to have abandoned the position. Care must be taken, however, that before a final decision is made that the individual has truly abandoned the position, the supervisor shall make an effort to contact the employee to determine his intentions. If the employee intends in fact to resign, this should be the action taken rather than abandonment of position, as future employment opportunity with LBJ-ASMCA may be affected. If the supervisor is unable to ascertain the employee's intention concerning his return to duty, processing of abandonment of position is proper and should be handled as follows:
- B. Action by Operating Officials – The employee's supervisor or Human Resources Manager shall recommend to the Chief Executive Officer with a request for Notice of Official Personnel Action (LBJ-ASMCA Form 303) that the employee be separated for job abandonment of the position. Under the "Remarks" section, list when (date) and what effort the supervisor (name) made to contact the employee and the result of that effort.
- C. Action by the Chief Executive Officer – Upon receipt of the request mentioned above, the Chief Executive Officer shall proceed with the separation action in accordance with instructions applying within the Human Resources Division only, including issuance of Notice of Official Personnel Action (LBJ-ASMCA Form 303).

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0449 Hearings Before the Governing Board of Directors

Hearing before the Governing Board of Directors will be conducted in accordance with the procedure promulgated by the Governing Board of Directors, copies of which are available in the Chief Executive Officer's Office.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0450 Standard Schedule of Disciplinary Offenses and Penalties.

- A. General Statement – The Standard Schedule of Disciplinary Offenses and Penalties (Annex B) is provided as a guide in the administration of discipline. Since the schedule is of the utmost concern to all employees, conspicuous posting is required. The Standard Schedule provides a uniform code of penalties for a reasonably complete list of offenses. The range of penalties is provided to give flexibility in dealing with particular situations. In general, after consideration of all circumstances, the penalty assessed should be the minimum which may reasonably be expected to correct the employee and maintain discipline and morale among other employees.
- B. Purposes – The Purposes of the Schedule are:
 - 1. To provide a measure of uniformity in imposing penalties consistent with individual differences and the nature of the position held.
 - 2. To develop generally on the part of employees a clearer understanding of what constitutes reasonable cause for disciplinary action.
 - 3. To provide a standard and uniform basis for disciplinary offenses and penalties and to support management in its administration of disciplinary matters.
- C. Application – In applying the Standard Schedule, the following instructions and guides are provided:
 - 1. Use of the Standard Schedule in presenting charges – When presenting charges to the employee, a blanket statement from the Schedule should not be used. Use only the parts which describe the employee's actual conduct and leave out parts which do not apply, for example, if an employee used abusive language only and not with Offense No 23 in its entirety. If the reason for contemplated disciplinary action cannot be described in terms of an offense from the Schedule, it should be possible to state the reason in terms of regulations or rules of

general conduct which have been violated or damaged due to employee's interference with management operations resulting from the employee's action. The factor of willful negligence should be avoided, as willfulness is difficult to establish.

2. Generally, the question of willfulness may be discarded if the fact of negligence, failure or dereliction of the employee is established.
3. Combination of Offenses – The schedule provides for disciplinary action in the case of a combination of any of the offenses listed. However, the preferment of more than one charge for a single offenses (example: "Sleeping and loafing"), is prohibited. In such cases, the more appropriate offense should be used and the proper penalty assessed. Where the infraction covers a combination of two or more normally unrelated offenses (example: "Intoxication" and "insubordination"), charges covering each offense should be preferred and a heavier penalty than that prescribed for any one such offense may be assessed.
4. Reckoning Period – The Standard Schedule provides for a reckoning period of specific interval of time, after an offense occurs. A repetition of the offense within the period calls for a more severe penalty as determined by the circumstances. Reckoning periods are not cumulative. They commence with the occurrence of the offense and expire absolutely at the end of the period of specified for the offense. To identify the offense as the first, second, or third with a reckoning period, review the record and determine if the employee has committed a like offense during the period, occurring just prior to the current offense.
5. Letters of Reprimand – the Standard Schedule provides for a letter of reprimand as the minimum penalty for all offenses. A copy of each reprimand shall be placed in the official personnel folder of the employee concerned. Reprimands may be

considered in determining disciplinary action taken at later dates. The letter of reprimand should not be confused with letters of caution or requirement which establish standards of conduct and performance, with written warnings as used with performance ratings or with other adverse correspondence such as used in cases involving abuse of sick leave.

6. Suspensions – The Standard Schedule provides for suspensions of vary lengths of time for all offenses. Suspension penalties are applicable to work days only.

D. Deferred Suspension.

1. Deferred suspensions help reduce lost time and may be suitable in some circumstances. If a suspension is deferred, it is held in abeyance during the reckoning period, contingent upon satisfactory conduct of the employee. When a suspension is deferred, the employee should be told in writing of the specific conditions under which it will be held in abeyance. (Note: A deferred suspension shall not be used as a PROPOSED disciplinary measure).
2. A deferred suspension may be invoked when a subsequent offense of any kind occurs during the reckoning period. The suspension may be summarily carried out if the employee committed a subsequent offense. If the individual does, and the proposed disciplinary action for the current offense. If a current offense is not established, a deferred suspension for a previous offense cannot be invoked. A deferred suspension shall be considered a letter of reprimand.

- E. Demotions – The Standard Schedule provides that, where appropriate, consideration may be given to demotion as a disciplinary penalty in lieu of removal. Normally, demotion should be taken as a disciplinary measure only in cases involving supervisory personnel.

F. Considering the Past Record.

1. The Standard Schedule provides that penalties for disciplinary offenses will, in

general, fall within the ranges indicated. However, unusual cases, depending upon the gravity of the offense and the past record of the employee, a penalty, either more or less severe than the maximum range provided for in the Schedule may be imposed. If an employee's record of past disciplinary offences is considered in assessing the penalty for a current offense, the employee must be so advised of this fact in the advance notice proposing the adverse action or in the notice proposing the adverse action or in the notice of adverse action if no advance notice is required. Not more than two years of an employee's past disciplinary record shall be considered in such connection.

2. Depending upon the severity of the offense, removal proceedings may be instituted against an employee for any four offenses committed in any 24 months period which include two or more offenses of the Standard Schedule or for the fourth occurrence of the same offense within the reckoning for that offense.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0451 Appeals and Grievances.

Any permanent career service employee may appeal any of the following actions which the individual considers to adversely affect as an employee:

- A. A performance evaluation.
- B. A separation or termination action.
- C. A classification decision.
- D. Alleged act of discrimination.
- E. Disciplinary actions.
- F. Non-selection for promotion from a group of properly ranked and certified candidates.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000.

11.0452 Appeals

- A. All appeals must be made in writing and state clearly the basis for appeals to the Board of

Directors via the Chief Executive Officer and must be filed in the Office of the Chief Executive Officer within ten work days after the effective date of the action appealed, except in the case of RIF, (Chapter 8). The appeal should also include the employee's request for a hearing if the individual desires and is entitled to one.

- B. If the Chief Executive Officer approves the hearing, it shall include the written appeal on the agenda of the Board's next scheduled meeting. If the appeal involves a removal, suspension or demotion, however, the Chief Executive Office shall arrange an appeal hearing as soon as possible and the hearing shall be heard by the Board within 30 days after the receipt of the appeal by the Chief Executive Officer. However, the Board of Directors may deny a hearing for any reason, extraordinary circumstance or when the employee has failed to request a hearing offered before the original decision.
- C. Hearings before the Board of Directors shall be conducted in accordance with the procedures promulgated by the Board. Copies are available in the Chief Executive Officer's Office.
- D. Attendance of other interest parties and or counsel may be limited by the Chief Executive Officer if good order, justice and fairness will be promoted.
- E. An employee who is terminated from career service may request the Board of Directors to place his name on an appropriate re-employment list and the Board of Directors shall grant this request where the circumstances are found to warrant re-employment.
- F. An employee may terminate their appeal at any time. An employee's request that his appeal be discontinued should there, be complied with.
- G. A proper appeal filed before the death of the employee must be processed to completion and adjudicated. If appropriate, the Board of Directors may provide for amendment of the employee's records to show retroactive restoration and the employee's continuance on the rolls in an active duty status to the date of death.

- H. If the decision is to take adverse action and the employee appeals this action, the appeal must be considered by the Chief Executive Officer. On the other hand, if the decision is not to take this adverse action no further action is required by the Chief Executive Officer in terms of consideration to the appeal.
- I. Hearing Preparations shall be follows:
1. Prior to the hearing, the entire appeal file shall be made available upon request to the employee or to a representative except when a file contains medical records concerning a physical or mental condition which a prudent physician would hesitate to inform the person concerned.
 2. All parties shall be served with notice at least ten days before the date set for the hearing. The notice shall state the time and place of such hearing.
- J. Standard of Review. The Board of Directors reviews decisions appealed by employees under this chapter for an abuse of discretion.
- K. Conduct of Hearings.
1. The employee shall present his case first. Evidence may be either documentary or by affidavit. The employee must not use affidavits to exempt persons from cross examination. The employee should not accept an affidavit in lieu of personal testimony from a witness who is present at the hearing.
 2. All persons appearing in proceedings before the Board of Directors in a representative capacity shall conform to the standards of ethical conduct required of attorneys and witnesses before the Court of American Samoa. If any such person does not conform to such standards, the Board of Directors may decline to permit such person to appear in a representative capacity in any proceeding before the Board of Directors.
 3. Witnesses shall be assured freedom from restraint, interference, coercion, discrimination or reprisal in presenting their testimony. Employees are in a duty status during the time they are made available as witnesses.
- L. Conclusions. Within 30 days after the conclusion of the hearings, the Board of Directors shall make fully record in its permanent records finding of fact and reasons for the action taken and its order based thereon which shall be final, subject only to further action if the employee appeals the decision in court. At the same time the Board of Directors shall send a copy of the findings and conclusions to the employee's address as given at the hearing or to a representative designated by the employee.
- M. Restoration of Rights. Any employee, when fully reinstated after appeal, shall be guaranteed all employee rights and benefits, including back pay, sick leave, annual leave, accrual and retirement.
- N. Correction of Performance Evaluation. A correction of a performance evaluation shall not affect a certification or appointment which has already been made from the register; the decision of Board of Directors in matters shall be final and binding.
- O. Correction of Classification Decision. Correction of a classification decision which results in a promotion or demotion shall be handled as stated in (Chapter 3) of this manual. The Board of Directors will determine the effective date of any such action.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 05-2000, eff. Sept. 25, 2000; Rule 2005, eff. 6 Jan 2006. Amendments: 2005, subsection (J) – amended in its entirety.

11.0453 Grievances

- A. The LBJ American Samoa Medical Center Authority, to be consistent with efficient work practices, and in recognition of the importance of the individual employee and the desirability of prompt consideration and disposition of problems affecting the employee's work environment, has established a procedure for the equitable handling of employee grievances.
1. Career service employees and contract specialists covered by these procedures shall have freedom to seek a solution of

grievances without fear of restraint, interference, coercion, discrimination or reprisal.

2. Career service employees and contract specialists must follow normal channels in presenting their grievances. The normal channels include:

- a. Informal Grievance Procedures which shall be as simple as possible and encourage settlement of matters at the lowest possible administrative level within the employee's division.
- b. Each employee is expected to make a maximum effort to achieve information settlement of their grievance. The employee should bring the matter to the attention of management promptly and proceed with dispatch.
- c. An employee may present a grievance concerning a continuing a practice or condition at any time. Employee must present grievance concerning a particular act or occurrence on the same date the employee became aware of the act or occurrence. The Chief Executive Officer may extend the time of one day if the employee gives a good reason for not presenting his grievance within that time limit.

- B. Grievance Committee. A permanent, ad hoc grievance committee of four members shall be appointed by the Chief Executive Officer, only three of which shall conduct hearings at any one time. No person shall serve on a committee who is employed in the same division as the employee. The Chief Executive Officer shall designate which member shall act as chairman at each hearing.

1. The committee shall prepare written report of its findings to the employee and the employee's supervisor within ten calendar days. Decisions of the committee shall be advisory.
2. An employee shall have the right to be accompanied, represented and advised by a

representative of their own choosing in presenting the grievance.

History: Rule 06-98, eff. Mar. 3, 1999

11.0454 Reduction in Force

- A. Employees may be separated in accordance with the statutes and approved Reduction-in-Force procedures of LBJ-ASMCA, without prejudice, because of lack of funds, curtailment of work or reorganization.
 1. Permanent employees may be separated only after 15 calendar days notice in writing.
 2. Emergency, intermittent, temporary or probationary employees may be separated immediately after notice in writing.
- B. It is the responsibility of Human Resources Division to develop a Reduction-In-Force procedure which shall include:
 1. Clearly defined layoff unit(s), either geographically or by administrative units or both, so as to limit the disruption of LBJ-ASMCA's total operation.
 2. The order of separation for employees which shall be based on the type of appointments held and by assigned class.
- C. The order for separating employees for LBJ-American Samoa Medical Center Authority is as follows:
 1. Employees with Emergency Appointments shall be separated first.
 2. Employees with Intermittent Appointments shall be separated next.
 3. Employees with Temporary Appointments shall be separated next.
 4. Employees with Probationary Appointments shall be separated next.
 5. Employees with Permanent Appointments shall be separated next.
 6. Emergency, intermittent, temporary or probationary appointees shall be laid off as administratively determined by Human

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Resources Division and approved by the Chief Executive Officer.

- D. Permanent employees shall have the right to appeal, as provided in this Chapter.
- E. Class as referenced in (Section 8.1.B(2)) is the identification of a position or a group of positions sufficiently similar in duties so that the same requirements of training, experience, or skill and the same title, examination and salary range may be applied.
- F. If function is transferred by LBJ-ASMCA action, the employees incumbent in those position will earn seniority from the date they entered LBJ-ASMCA.
- G. It is the responsibility of each employee to bring any discrepancy in a service computation date or other date used for seniority to the attention of the Chief Executive Officer or Human Resources Manager in order to resolve any differences.
- H. The rights of employees who have been scheduled for Reduction-in-force to take a reassignment or a voluntary demotion to a vacancy that is to be filled in their own layoff unit for which they qualify, is determined by the Chief Executive Officer and Human Resources Manager.
- I. No permanent employee shall lose the employee's position through Reduction-in-Force without being first offered by the Chief Executive Officer and Human Resources Division Manager those positions within the layoff unit for which the individual qualifies at the time of the Reduction-in-Force currently being held by emergency, temporary or probationary employees: but only within 15 calendar days prior to what would be the permanent employee's effective separation.
- J. Permanent employees separated due to Reduction-in-Force shall be placed on the LBJ-American Samoa Medical Center Authority wide Reduction-in-Force Register for one year.
- K. Reduction of Hours of Full-Time Employment. When, due to lack of fund or curtailment of work, Reduction-In-Force procedures are

contemplated, hours of work of full-time employees, regardless of tenure or seniority can be reduced from 40 hours per week to a minimum of 32 hours per week in lieu of Reduction-In-Force. Annual salary shall be reduced accordingly, based on the number of hours actually worked. The hours eliminated shall be considered non-working hours of LBJ-ASMCA for the employees concerned, and annual leave shall not be authorized or taken for such hours.

- L. Reduction of hours of full-time employees is not a Reduction-In-Force action and can be administratively implemented by Chief Executive Officer. When hours of full-time employees are reduced in lieu of Reduction-In-Force, employment will be considered full time for purposes of sick and annual leave accrual and seniority.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 2005, eff. 6 Jan 2006.

Amendments: (B)(1) deleted "...but not so small as to unduly restrict the options available to employees with greater seniority."; (D) amended; (F) amended; (G) amended; (H) amended; (I) amended; (J) amended; (K) amended; (L) amended; (M) deleted; (N) deleted; (O) deleted; (P) deleted; (Q) deleted; (R) deleted; (S) deleted

11.0455 Furlough

- A. A furlough is normally a Reduction-In-Force action and therefore Reduction-In-Force procedures are followed. An employee may be furloughed when it is intended to recall the individual to duty within one year in the position from which furloughed. Furlough is not used unless it seems certain that the Reduction-In-Force is a temporary condition and that the furloughed employee will be returned to duty. When possibility of recall within one year is doubtful, the separation (termination) procedures under Reduction-In-Force should be followed. Although furlough is not an absolute commitment of recall, it may cause serious employee relations problems if used in the absence of very strong likelihood of recall to duty.
- B. Order of Furlough – A competing employee in Reduction-In-Force may not be separated while an employee with lower retention standing in

this individual's layoff unit is on furlough from the same class. The separation of a furloughed employee is a new Reduction-In-Force action for the furloughed employee and the applicable procedures must be followed.

1. Maximum Length of Furlough – Furlough may not extend more than one year. The one-year limit on furlough is imposed because furlough results in unearned benefits such as additional service credit for Reduction-In-Force and leave. These benefits are not considered to be in the interest of LBJ-ASMCA when extended beyond a year. The one-year time limit begins the day after the end of the notice period.
2. Order of Recall from Furlough – when more than one employee is furloughed from the same class and layoff unit, each is recalled in the order of this individual's retention standing, beginning with the furloughed employee with the highest standing. Recall from furlough for accepting other options, like placement in lieu of separation or furlough, is determined by the qualifications, availability and sub-group standing of the furloughed employees. Employees on furlough have rights at least equal to those that they would have had they been separated and placed on LBJ-ASMCA wide Reduction-In-Force.
3. No Recall from Furlough – If the situation changes so that furloughed employees cannot be recalled to duty, a new Reduction-In-Force notice must be issued at least 15 calendar days before separation. When a one year furlough is to end in separation, a notice is issued soon enough to give the furloughed employee at least 15 calendar days' advance notice of separation and also soon enough to keep the furlough from exceeding the maximum length of one year.
4. No Return from Furlough – If a furloughed employee refuses or does not respond to calls to return to duty, a new Reduction-In-Force notice is not required. However, the

employee's separation is termed a separation in Reduction-In-Force and is effective on or after the specified date or return to duty.

5. Short Furlough – When it is necessary to furlough an employee for no more than 30 days because of lack of work or funds, the furlough is not a Reduction-In-Force action. In such cases, however, emergency, intermittent, temporary and probationary employees must be terminated prior to furloughing any permanent career service employees who are in the same class and layoff unit.
- C. Reduction of Hours of Full-Time Employment. When due to lack of fund or curtailment of work. Reduction-In-Force procedures are contemplated, hours of work of full-time employees regardless of tenure or seniority can be reduced from 40 hours per week to a minimum of 32 hours per week in lieu of Reduction-In-Force. Annual salary shall be reduced according based upon the number of hours actually worked. The hours eliminated shall be considered non-working hours of LBJ-ASMCA for the employees concerned, and annual leave shall not be authorized or taken for such hours.
- D. Reduction of hours of full-time employees is not a Reduction-In-Force action and can be administratively implemented by Chief Executive Officer. When hours of full-time employees are reduced in lieu of Reduction-In-Force, employment will be considered full time for purposed of sick and annual leave accrual and seniority.

History: Rule 06-98, eff. Mar. 3, 1999; amd. Rule 2005, eff. 6 Jan 2006.

11.0456 Appeals

A permanent employee officially notified of a proposed separation or furlough due to Reduction-In-Force may request a hearing before the Board of Directors. The employee's request must be in writing to the Chief Executive Officer within five calendar days of the date the employee receives the written notice. The employee request should contain a written justification for requesting the hearing. If the request

is granted, the Board of Directors shall render a decision within the 15 calendar days' notice period cited in (Section 8.1).

History: Rule 06-98, eff. Mar. 3, 1999

11.0457 Contract Specialist

Contract Specialists are not part of the career service of the LBJ American Samoa Medical Center Authority. The employment of a contract specialist is governed by the contract that the employee signs prior to accepting a position with the Chief Executive Officer. As such, contract specialists are not entitled to the regular benefits of the career service including retirement, periodic step increments and premium pay. A contract specialist is employed for a specific function, the minimum qualifications of which no resident of American Samoa at the time of the opening could be found to meet. Contract specialists are recruited without discrimination because of race, color, age, sex, national origin, religion or politics. All candidates for contract appointment receive uniform treatment. All selectees and their accompanying dependents shall be required to take pre-employment physical examinations which shall be approved by the Chief Executive Officer.

History: Rule 06-98, eff. Mar. 3, 1999

11.0458 Contract Recruitment

- A. All vacant positions within the LBJ American Samoa Medical Center Authority shall be filled on a career service basis whenever possible.
- B. Preference will be given to all persons classified as permanent residents under the laws of American in accordance with the policies of the LBJ American Samoa Medical Center Authority for all positions to be filled in the career service.
- C. Advertisement for vacancies may be simultaneously placed locally, in Hawaii and on the Mainland for filling with the career service.
- D. Applicants who are entitled to permanent residence in American Samoa who live outside of American Samoa shall be given consideration for career service positions equal to that given those who live in American Samoa.
- E. All current regulations, procedures and benefits for positions in the career service will apply.

- F. When a position cannot be filled within the career service, it may be filled from abroad by contract. Competition and selection for contract positions shall be based solely on merit, fitness, and entirely without regard to race, color, sex, age, religion or national origin. No preference shall be permitted other than that which relates to qualifications. It is the policy of the LBJ American Samoa Medical Center Authority that the most qualified applicant be selected for any position filled by contract. Qualifications will be measured against the requirements of the positions and examinations administered under (Section 2) of this manual. No more than five names shall be certified at any one time. Requests for additional names may be made to replace names of eligible who:

- 1. Are no longer interested in employment.
- 2. Were not satisfactory for valid and permanent reasons directly connected with the position as determined by the Chief Executive Officer from written report by the selecting authority.

History: Rule 06-98, eff. Mar. 3, 1999

11.0459 Contract Compensation

- A. Compensation for positions filled by contract shall be based on the salary rates of the career service.
- B. Base salaries shall be taken from LBJ American Samoa Medical Centers General Salary Schedule.
- C. An overseas post differential may be applied to the base salaries of some management positions filled by contract.
- D. Contract specialist, their dependents and household effects, will be transported to American Samoa and returned following contract maturity pursuant to similar policy set forth in the Government of American Samoa Administrative Manual.
- E. Housing, medical requirements and care and other physical benefits will be in accordance with policy as set forth by LBJ-ASMCA similar as outlined in the Government of American Samoa Administrative Manual.

F. Contract Specialists who are on twelve-month contracts shall accrue annual leave at the rate of 1 day per pay period (26 days per year) and sick leave at the rate of one-half day per pay period (13 days per year). Annual leave can be accumulated without time limitation during the life of a contract. The contract specialist will be reimbursed for unused annual leave at contract maturity. Sick leave can be accumulated without time limitation and can be carried over to subsequent contracts. No reimbursement will be made for excess sick leave.

History: Rule 06-98, eff. Mar. 3, 1999

11.0460 Contract Expiration

At the expiration of a contract, every effort shall be made to fill the position in the career in the career service. If a position which has been filled by contract can be filled within the career service, the incumbent for that position can compete for the position on a career service basis if the employee is entitled to permanent residency in American Samoa or the employee's spouse is entitled to permanent residency.

History: Rule 06-98, eff. Mar. 3, 1999

11.0461 Contract Renewal

- A. Contract renewal is the prerogative of management and is based solely upon need and performance of a contract specialist as determined by management.
- B. Upon expiration of an initial contract, as an inducement for a contract specialist to accept an additional contract, a bonus of 5% for one year renewal, 15% for the first two-year renewal and 10% for each two-year renewal thereafter may be applied to the base salary. Renewal for a one-year period will be limited to one renewal unless prior approval is obtained in writing from the Chief Executive Officer. In addition, contract reimbursement will be reviewed at contract maturity in terms of the prevailing economy and salaries for the field of specialty in the geographical area of the specialist's permanent residence.
- C. A one-year renewal (third year) contract entitles the specialist to:

- 1. Transportation costs for specialist and its dependents to the point of recruitment and return to American Samoa at the conclusion of the initial, two year contract. If the specialist elects not to travel to the point of recruitment, an allowance, equivalent to the cost of transportation for the specialist and dependents to the point of recruitment and return will be provided, to be applied to the round trip transportation to the point of recruitment.
- 2. At the conclusion of the third year (maturity of one year contract renewal), the specialist and dependents will receive a transportation allowance equivalent to 50% of the cost of returning them to their point of recruitment and an allowance equivalent to 100% of the cost of returning their household effects to point of recruitment based upon, but not exceed their established weight allowance.
- 3. Contract renewal for the full contracting period (two years) entitles the contract specialist to all benefits of the original contract, including travel benefits described in (Section 9.5B(2)), an allowance for shipping an additional 1,000 pounds of household effects if the employee is married or with dependents or 500 pounds if single without dependents and 1000 allowance for shipping established weight allowance of household effects to point of recruitment at contract maturity.

History: Rule 06-98, eff. Mar. 3, 1999

11.0462 Miscellaneous

- A. Since the basis for most benefits for a contract specialist is contained in the transportation and post differential (home disruption allowance) it would be inconsistent for the Government of American Samoa to contract with two specialists from the same household.
- B. If a dependent enters into employment, regular career service principles and procedures apply.
- C. If substantial changes are contemplated in the duties and responsibility assigned to a contract specialist during the life of a contract involved

may request a review of the contract compensation by the Chief Executive Officer.

- D. Any complaint by a contract specialist shall be handled by following the same procedures as those followed by career service employees (Chapter 7).
- E. Contract specialists are urged to conduct themselves both on-the-job and off-the-job in the same manner as career service employees. Outside work is permitted to the extent that it does not prevent the specialist from devoting time to primary interests, talents and energies to the accomplishment of his contracted work for the LBJ American Samoa Medical Center Authority or tend to create a conflict of interest.
- F. Nominations for the training of Contract Specialists shall be submitted by the Contract Specialist's immediate supervisor to the Manager of Human Resources Division who shall retain discretion for its approval or disapproval. No contract specialist shall be recommended for training to gain skills or knowledge which the employee might reasonably be expected to possess in order to have been selected for the position.
- G. In all contract recruitment and placement activities, the same policy applies to contract specialists as to employees in the career service whereby two or more members of a family maybe employed within the same office as long as a spouse or family member does not officially and immediately supervise the other. This requirement not only is applied on the basis of facts as they exist at the time of appointment but at any time while serving as an employee of the LBJ American Samoa Medical Center Authority.

History: Rule 06-98, eff. Mar. 3, 1999

11.0463 Travel Policy

It is the policy of the LBJ American Samoa Medical Center Authority to adopt the American Samoa Government Travel and Transportation Policy Manual as applied to LBJ-ASMCA employee's travel on LBJ-ASMCA business.

History: Rule 06-98, eff. Mar. 3, 1999

11.0464 Travel Approval

For employees contemplating travel on LBJ-ASMCA business, LBJ-ASMCA Form TA-02 should be filled out and signed by the appropriate LBJ-ASMCA official requesting travel. No formal processing of travel arrangements should be initiated prior to obtaining final approval from the Chief Executive Officer.

History: Rule 06-98, eff. Mar. 3, 1999

11.0465 Travel Arrangements

Once travel is approved by the Chief Executive Officer, the Human Resources Manager will seek the most economical air fare using internet resources as well as those offered by the local travel agents.

History: Rule 06-98, eff. Mar. 3, 1999

11.0466 Travel Allowance

As soon as the air fare cost is determined and a local travel agent is selected, a Purchase Order shall be issued for the lowest fare quoted. Advance Per Diem Allowance should be based on the most recent table available in the American Samoa Government Travel Manual. Modest advance allowance for land transportation should be included if appropriate and justifiable. Registration Fees and other miscellaneous fees should also be included in the advance allowance, if not already paid.

History: Rule 06-98, eff. Mar. 3, 1999

11.0467 Travel Report

Upon the return of the employee from LBJ-ASMCA travel, a travel report is required to be submitted within 30 days. Failure to submit a travel report within 30 days will prevent the employee from future travel consideration in addition to other penalties.

History: Rule 06-98, eff. Mar. 3, 1999

11.0468 Travel for Board Members and Chief Executive Officer

Travel for the Chief Executive Officer and Board Members are processed on LBJ-ASMCA Form TA-01. Upon formal travel approval through Board action, the cost of Air Fare, Per Diem, and other related expenses are to be advanced to the traveler. Air fare is based on unrestricted full coach fare obtained from Internet resources or local travel agent. Per Diem will be set using the ASG standard rate plus \$75.00 per day for miscellaneous expenses.

Registration Fees are paid directly by LBJ-ASMCA at the time conference registration is made.

History: Rule 06-98, eff. Mar. 3, 1999

11.0469 *An Oral Report*

A trip report at the following Board Meeting upon the return of the traveler is mandatory.

History: Rule 06-98, eff. Mar. 3, 1999

[End of Title 11 – Chapter 4]

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TITLE 11 – CHAPTER 05 – LBJ AMERICAN SAMOA
MEDICAL CENTER DRUG AND ALCOHOL ABUSE
POLICY

Sections:

- 11.0501 Purpose.
- 11.0502 Scope.
- 11.0503 Definitions.
- 11.0504 Prohibitions.
- 11.0505 Types of Testing.
- 11.0506 Applicant Drug Testing.
- 11.0507 Occurrence Drug Testing.
- 11.0508 Random Drug Testing Requirements and Identification of Testing Designated Position.
- 11.0509 Reasonable Suspicion Testing.
- 11.0510 Call Back Duty.
- 11.0511 Return to Duty Testing.
- 11.0512 Follow-Up Testing.
- 11.0513 Alcohol and Drug Testing Procedures.
- 11.0514 Drug Testing – Confirmation Test.
- 11.0515 Alcohol Testing – Initial Screening Test.
- 11.0516 Alcohol Testing – Confirmation Test.
- 11.0517 Collection of Samples – Privacy.
- 11.0518 Refusal – Procedures
- 11.0519 Result, Medical Review.
- 11.0520 Action – Positive Test.
- 11.0521 Release of Information.

Editors Note: 2020 Edition of Rules omitted Chapters 5 and 6 of Title 11. Recovered documents show the full text of the aforementioned omissions.

11.0501 Purpose.

- A. LBJ promulgates this Program in order to protect the environment, to protect its Employees, and to maintain public health and safety. This Program establishes policies, criteria, and procedures that help to maintain a workplace free from the improper use of alcohol and illegal drugs. It applies to all LBJ Employees performing work for LBJ. The procedures include detection of the use of alcohol and illegal drugs by current or prospective Employees.
- B. LBJ encourages Employees who have drug or alcohol use difficulties to seek assistance or rehabilitation services through the American Samoa Government’s Department of Human Resources Employee assistance programs, through LBJ’s Employee assistance programs, or through the Employee’s health plan, as

appropriate. Obtaining assistance, however, does not absolve an Employee from further testing, such as random or reasonable suspicion testing. Once an Employee is identified for testing, the Employee is compelled to take the test or be considered as refusing to test. Therefore, Employees are encouraged to seek help before it is too late. Employees participating in a rehabilitation program may use their accumulated vacation or sick leave for in or out-patient treatment.

- C. LBJ will also provide adequate safeguards to ensure that testing is performed in a manner which protects the individual’s rights or privacy, to the extent possible, and conform to the requirements of the Drug-Free Workplace Act of 1988.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0502 Scope.

This policy applies to all Employees of LBJ, and applicants for employment with LBJ.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0503 Definitions.

For the purposes of this Program, the following definitions apply:

- A. Act means the provisions of the Drug-Free Workplace Act of 1988 (41 U.S.C. 701 et. seq.)
- B. Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular, weight alcohol’s including methyl or isopropyl alcohol, and including any medication containing alcohol.
- C. Alcohol Concentration (AC) or Breath Alcohol Concentration (BAC) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 0210 liters of breath as indicated by an evidential breath test.
- D. Alcohol Use means the consumption of any beverage, mixture or preparation, including any medication, containing alcohol.
- E. LBJ Medical Center means Lyndon Bird Johnson Medical Center, a quasi-governmental entity created pursuant to Title 13, A.S.C.A.

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- F. Breath Alcohol Technician (BAT) means an Employee who is certified in the operation of an evidential breath testing (EBT) device. The BAT obtains both initial and confirmation alcohol tests with or without trained assistance.
- G. Collection Site means a place used for conducting drug and/or alcohol tests.
- H. Collection Site Person means a technician or other person trained and qualified to take urine samples and to secure urine samples for later laboratory analysis.
- I. Confirmation Test means, for drug testing, a second analytical procedure, gas chromatography/mass spectrometry, to identify the presence of a specific drug. For alcohol testing, a second test, following a screening test with a result of 0.02 or greater, that provides quantitative data of alcohol concentration.
- J. Confirmed Positive Test means, for drugs, a finding based on a positive initial or screening test result, confirmed by another positive test on the same sample. The confirmatory test must be by the gas chromatography/mass spectrometry method.
- K. Counseling means assistance provided by qualified professionals to Employees, especially, but not limited to those Employees whose job performance is, or might be, impaired as a result of alcohol and/or illegal drug use or a medical-behavioral problem; such assistance may include short-term counseling and assessment, crisis intervention, referral to outside treatment facilities, and follow-up services to the Employee after completion of treatment and return to work.
- L. Drug Certification means a written assurance signed by an Employee with known past illegal drug involvement, as a condition for obtaining or retaining employment, stating that the Employee will refrain from using or being involved with illegal drugs while employed in a position with LBJ.
- M. Employee means any Employee of LBJ. For the purpose of pre-employment/pre-duty testing the term Employee includes a person applying for employment with LBJ.
- N. Employee Assistance means a program of counseling, referral, and educational services concerning illegal drug use and other medical, mental, emotional, or personal problems of Employees, particularly those which adversely affect behavior and job performance.
- O. Evidential Breath Testing Device (EBT) means a device that has been approved by the National Highway Traffic Safety Administration to ensure alcohol concentration.
- P. Illegal Drug, subject to the further provisions herein, means a controlled substance, as specified in A.S.C.A. §13.10 et. seq.
- Q. Medical Review Officer (MRO) means a licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders, who is employed or used by LBJ to review laboratory drug testing results and verify positive test results for drug testing. A MRO reviews testing procedures, and evaluates and counsels Employees with positive alcohol and drug test results.
- R. Occurrence means any event or incident that is a deviation from the planned or expected behavior or course of events in connection with any LBJ or LBJ-controlled operation, if the deviation has environmental, or public health and safety significance. Incidents having such significance include the following, or incidents of a similar nature, involving LBJ Employees:
1. Injury or fatality to any person involving actions of a LBJ Employee.
 2. Involvement in an incident which results in an explosion, fire, personal injury or death, or significant damage to property.
 3. Accidental release of pollutants which results or could result in a significant effect on the public or environment.
 4. LBJ Employee receiving a citation for a moving traffic violation within the scope of employment, or at any time when involving alcohol or illegal drugs.
- S. Random Testing means the unscheduled, unannounced urine drug testing of randomly

selected individuals in Testing-Designated Positions, by a process designed to ensure that selections are made in a non-discriminatory manner.

- T. Reasonable Suspicion means a suspicion based on an articulable belief that an Employee improperly uses alcohol or illegal drugs, drawn from particularized facts and reasonable inferences from those facts, as detailed further in §4.2716 (b)(2.2.3.).
- U. Referral means the direction of an Employee toward an Employee Assistance Program or to an outside treatment facility by the Employee Assistance Program professional, for assistance with prevention of illegal drug use, treatment, or rehabilitation from alcohol or illegal drug use or other problems. Referrals to an Employee Assistance Program can be made by the Employee (self-referral), LBJ supervisors or managers.
- V. Rehabilitation means a formal treatment process aimed at the resolution of behavioral-medical problems, including alcohol or illegal drug use, and resulting in such resolution.
- W. Substance Abuse Professional (SAP) means a licensed physician, or a licensed or certified psychologist, social worker, Employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug-related disorders. The role of the SAP in the program is to evaluate the need for a rehabilitation plan for Employees referred to the SAP, develop a rehabilitation program as required, monitor and assist the Employee in their progress to return to full duties and schedule return-to-duty and follow-up tests.
- X. Testing-Designated Position names a position whose incumbents are subject to drug testing under this part.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0504 Prohibitions.

The following are prohibited actions for Employees and shall be grounds for termination:

A. Alcohol:

1. To report for or remain on duty with a breath alcohol concentration (BAC) of 0.02 or greater; BAC of 0.04 or greater requires “return to duty test” pursuant to §2.2.6 herein and clearance of Substance Abuse Professional (SAP).
2. To possess alcohol (including possession of prescription or over the counter medicines containing alcohol).
3. To use alcohol while performing a safety sensitive function.
4. To use alcohol 4 hours prior to performing safety-sensitive functions
5. To use alcohol 8 hours following an accident, or before a post-accident alcohol test is completed.
6. To refuse to take a required alcohol test.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0505 Types of Testing.

- A. To use any of the following illegal drugs or classes of drugs: marijuana; cocaine; opiates; phencyclidine; amphetamines and/or controlled substances listed in A.S.C.A. §13.10 et. seq., except as prescribed by a physician, and then only if the physician has advised the Employee that the drug will not adversely affect the Employee’s ability to safely perform his job responsibilities.
- B. To report or remain on duty while on drugs.
- C. To refuse to take a required drug test.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0506 Applicant Drug Testing.

An applicant for a Testing-Designated Position will be tested for the use of alcohol and illegal drugs before final selection for employment or assignment to such a position. Applicants with a history of illegal drug use, or who refuse to submit to a drug test, or tests positive, shall not be selected. LBJ shall

schedule the test date and time. Applicants will not be permitted to reschedule a drug test, except for an emergency. Applicants are required to provide a release for LBJ to verify the last two (2) years of employment history, including obtaining the results of prior alcohol and drug tests.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0507 Occurrence Drug Testing.

Drug and alcohol tests are required as soon as possible following an Occurrence. The alcohol test must be conducted within 8 hours of the Occurrence. The drug test must be conducted within 24 hours of the Occurrence. NOTE: Nothing in this Program shall be construed to delay necessary medical treatment for Employees involved in an Occurrence.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0508 Random Drug Testing Requirements and Identification of Testing Designated Position.

- A. Each year at least 25 percent (25%) of the Testing-Designated Positions will tested for alcohol misuse and 50 percent (50%) for drug use. Selection of Employees for these tests will be through a scientifically valid random-position number selection method. These unannounced tests will be conducted throughout each 12 month period. Each Testing-Designated Positions Employee will have an equal chance of selection each time a test is administered.
- B. The Testing-Designated Positions subject to random drug testing are: Positions identified by LBJ which entail duties where failure of an Employee adequately to discharge his or her position could significantly harm the environment, fellow Employees, or public health or safety.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0509 Reasonable Suspicion Testing.

- A. An Employee may be tested for the improper use of alcohol or illegal drugs, if the behavior of such an Employee creates the basis for reasonable suspicion of the improper use of alcohol or illegal drugs. Two or more LBJ supervisory or management officials, at least one of whom is in the direct chain of supervision of the Employee,

must agree that such testing is appropriate. Reasonable suspicion must be based on an articulable belief that an Employee has improperly used alcohol or illegal drugs, drawn from particularized facts ad reasonable inferences from those facts.

- B. Such a belief may be based upon, among other things, observable phenomena, such as direct observation of:
 - 1. The use or possession of alcohol or illegal drugs;
 - 2. The physical symptoms of being under the influence of alcohol or illegal drugs;
 - 3. A pattern of abnormal conduct or erratic behavior;
 - 4. Arrest for a conviction of an alcohol or drug related offense, or the identification of the Employee as the focus of a criminal investigation into illegal drug possession, use, or trafficking;
 - 5. Information that is either provided by a reliable and credible source or is independently corroborated; or
 - 6. Evidence that an Employee has tampered with a drug test; or
 - 7. Temperature of the urine specimen is outside the range of 32.5-37.7 degrees centigrade or 90.5-99.8 degrees Fahrenheit.
- C. The fact that an Employee had a confirmed positive test for the use of illegal drugs at some prior time, or has undergone a period of rehabilitation or treatment, will not, in and of itself, be grounds for testing on the basis of reasonable suspicion.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0510 Call Back Duty.

Employees who are called in to work outside of their regularly-scheduled hours shall inform their LBJ supervisor if they consumed alcohol within the previous four hours, have reason to believe that their alcohol concentration level would be 0.02 BAC or greater, or would otherwise be ineligible for duty due to other prohibitions of this Program. The disclosure

shall not subject the Employee to disciplinary action; however, LBJ is not required to offer work to the Employee.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0511 Return to Duty Testing.

Whenever an Employee is referred to a Substance Abuse Professional (SAP) to determine the need for assistance in resolving difficulties associated with drugs or alcohol prohibitions, a return to duty test is required. Only the SAP may require the Employee to take both alcohol and drug tests. Test results must be less than 0.02 BAC and negative for controlled substance use before an Employee can return to a Testing-Designated Position.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0512 Follow-Up Testing.

Any Employee who the SAP determines as needing additional assistance in maintaining their resolve after an Employee obtains a negative return to duty test result and is performing a Testing-Designated Position is subject to unannounced follow-up tests. The SAP may require both drug and alcohol tests be administered, prescribe the length of the follow-up tests (up to 60 months), and prescribe the frequency of unannounced follow-up tests (at least 6 in the first 12 months). Follow-up tests are in addition to other tests to which the Employee may be subjected.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0513 Alcohol and Drug Testing Procedures.

- A. All drugs and alcohol tests and procedures will be conducted in compliance with regulation 49 CFR §40 et. seq.
- B. Leave shall not be granted after an Employee has been informed that he/she is required to submit to testing.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0514 Drug Testing – Confirmation Test.

Employees with negative test results will not be contacted. A Medical Review Officer (MRO) will contact Employees who test positive from improper alcohol or drug use. The Employees will have an opportunity to explain to the MRO that the results were not due to the improper use of alcohol or illegal drugs. Employees, at their own cost, may select a

third-party certified laboratory to analyze the split sample. The selection of a certified third party laboratory shall be made through the MRO. The Employee has 72 hours from the MRO notification (or from their supervisor if the MRO is unable to contact the Employee) to exercise this option, otherwise the confirmation test will be accomplished by the test vendor's laboratory.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0515 Alcohol Testing – Initial Screening Test.

LBJ may use alcohol saliva swab test methodology or an evidential breath testing device to screen for alcohol misuse. The employer shall not employ blood alcohol testing methodology to screen or confirm Employee BAC; however, blood alcohol test results obtained from law enforcement officials in their investigations may be used to meet DOT post accident confirmation test requirements.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0516 Alcohol Testing – Confirmation Test.

An evidential breath testing (EBT) device approved by the National Highway Traffic Safety Administration will be used to confirm BAC. The testing will be conducted by a Breath Alcohol Technician (BAT) who is certified to operate the EBT device. The BAT will immediately inform the LBJ HR manager of any confirmed test result of 0.02 or higher BAC. The Employee with a 0.02 or higher will be released from duty for 24 hours. In addition, Employees with test results of 0.04 or higher BAC will be restricted from performing a Testing-Designated Position until released by the SAP and only after having a negative test result(s).

History: Rule 07-98, eff. Feb. 9, 1999.

11.0517 Collection of Samples – Privacy.

Procedures for providing urine specimens must allow Employee privacy, unless there is reason to believe that a particular Employee may alter or substitute the specimen to be provided. LBJ shall utilize a chain of custody procedure for maintaining control and accountability from point of collection to final disposition of specimens, and testing laboratories shall use appropriate cutoff levels in screening specimens to determine whether they are negative or positive for a specific drug, consistent with 49 CFR

§40 et. seq. LBJ will ensure that only appropriately certified testing laboratories are utilized.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0518 Refusal – Procedures

- A. If the Employees refuses to cooperate with the urine collection (e.g. refusal to provide a specimen or to complete paperwork), then the Collection Site Person shall inform the MRO and shall document the non-cooperation. The MRO shall report the failure to cooperate to LBJ. Individuals failing to cooperate shall be treated in all respects as if they had been tested and had been determined to have improperly used alcohol or an illegal drug.
- B. The Collection Site Person shall ascertain that there is a sufficient amount of urine to conduct an initial test, a confirmatory test, and a retest, in accordance with 49 CFR § 40 et. seq. If there is not a sufficient amount of urine, additional urine will be collected in a separate container. The Employee and the Collection Site Person must keep the specimen in view at all times. When collection is complete, the partial specimens will be combined in a single container. In the event that the Employee fails to provide a sufficient amount of urine, the amount collected will be noted and documented. In this case, the Collection Site Person will consult with the employee’s supervisor to determine the next appropriate action. This may include deciding to reschedule the Employee for testing, to return the Employee to his or her work site and initiate disciplinary action, or both.
- C. The following constitute a refusal to test:
 - 1. Refusal to take a test either by statement or action;
 - 2. Refusal to sign appropriate forms as required;
 - 3. Failure to provide adequate breath for alcohol testing without a valid medical explanation;
 - 4. Behavior or conduct that clearly obstructs the testing process, and,

- 5. Leaving the scene of an accident without a valid reason before the tests have been conducted.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0519 Result, Medical Review.

All test results shall be submitted for medical review by the MRO. The Medical Review Officer will consider the medical history of the Employee or Applicant, as well as any other relevant biomedical information. When there is a confirmed positive test result, the Employee or Applicant will be given an opportunity to report to the MRO the use of any prescription or over-the-counter medication. If the MRO determines that there is a legitimate medical explanation for a confirmed positive test result, consistent with legal and non-abusive drug use, the MRO will certify that the test results do not meet the conditions for a determination of improper use of alcohol or illegal drugs. If no such certification can be made, the MRO will make a determination of improper use of alcohol or illegal drugs.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0520 Action – Positive Test.

- A. When an Applicant for employment has been tested and determined to have improperly used alcohol or an illegal drug, processing for employment will be terminated and the Applicant will be so notified.
- B. When an Employee is tested and determined to have improperly used alcohol or illegal drugs, if this is the first determination of use of illegal drugs by that Employee, the Employee may be offered a reasonable opportunity for rehabilitation, consistent with LBJ’s policies. When an Employee who is in a Testing-Designated Position has been tested and determined to have used an illegal drug, LBJ shall immediately remove that Employee from the Testing-Designated Position. If rehabilitation is offered, any Employee will be placed in a non-Testing Designated Position, provided there is such an acceptable position in which the Employee can be placed during rehabilitation. If there is no acceptable non-Testing Designated Position, the Employee will be placed on sick, annual, or other leave status, for a reasonable period sufficient to permit rehabilitation.

However, the Employee will not be protected from disciplinary action which may result from violations of work rules other than a positive test result for alcohol or illegal drugs.

- C. Following a determination, after counseling or rehabilitation, that the Employee can safely return to duty, LBJ may offer the Employee reinstatement, in the same or a comparable position to the one held prior to the removal. Failure to take the opportunity for rehabilitation, if it has been made available, for the improper use of alcohol or illegal drugs, will result in disciplinary action up to and including removal from employment with LBJ.
- D. Any Employee who is twice determined to have improperly used alcohol or illegal drugs shall in all cases be removed from employment with LBJ.
- E. An Employee who has been removed from a Testing-Designated Position because of the use of alcohol or illegal drugs may not be returned to such position until that Employee has:
 - 1. Successfully completed counseling or a program of rehabilitation;
 - 2. Undergone a urine drug test with a negative result; and
 - 3. Been evaluated by a SAP, who has determined that the Employee is capable of safely returning to duty.
- F. After an Employee determined to have improperly used alcohol or illegal drugs has been returned to duty, the Employee shall be subject to unannounced drug testing, at intervals, for a period of 12 months.

History: Rule 07-98, eff. Feb. 9, 1999.

11.0521 Release of Information.

Except as provided by law or regulation, neither the Director nor a department shall release information on tests required under this policy.

Written test results will be provided to Employees who tests positive for either or both drugs or alcohol tests.

History: Rule 07-98, eff. Feb. 9, 1999.

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TITLE 11 – CHAPTER 06 – LBJ AMERICAN SAMOA MEDICAL CENTER PROCUREMENT	11.0640	Bid Security
	11.0641	Contract, Performance, Payment and Other Bonds
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11.0601 Short Title.	11.0643	Fiscal Responsibility.
11.0602 Authority.	11.0644	Architect–Engineer Services.
11.0603 Purpose.	11.0645	Required contract Provisions.
11.0604 Definitions.	11.0646	Duties of the LBJ Chief Procurement Officer.
11.0605 Applicability.	11.0647	Policy.
11.0607 Centralization of Procurement Authority.	11.0648	Definitions.
11.0608 Chief Procurement Officer.	11.0649	Local Bidder Preference and Evaluation.
11.0609 Centralized Procurement Authority.	11.0650	Responsibilities.
11.0610 Coordination.	11.0651	Contract File Documentation.
11.0611 Duties of the Attorney General.	11.0652	Disputes and Appeals.
11.0612 Duties of the LBJ Chief Procurement Officer.	11.0653	Ethical Conduct Standard For LBJ Employees And Contractors.
11.0613 Duties of the LBJ Chief Financial Officer.	11.0654	Definitions.
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11.0615 Methods of Source Selection.	11.0656	Prohibition Against Gratuities and Kickbacks.
11.0616 Small purchases.	11.0657	Prohibition Against Contingent Fees.
11.0617 Noncompetitive Bidding.	11.0658	Restrictions On Employment.
11.0618 Invitation for bids.	11.0659	One Year Representation Restriction Regarding Matters For Which A Former Employee Was Officially Responsible.
11.0619 Rejection Of Bid.	11.0660	Disqualification Of Business When An Employee Has A Financial Interest.
11.0620 Correction of Bid.	11.0661	Selling To LBJ Within 6 Months After Termination Of Employment Is Prohibited.
11.0621 Withdrawal of Bid.	11.0662	Policy.
11.0622 Cancellation Of Awards.	11.0663	Prohibition Against Employee Use And Contractor Acceptance Of Purchase Requisitions.
11.0623 Awarding of Contract.	11.0664	Civil Penalties.
11.0624 Competitive Negotiation.	Appendix A	– Termination for Convenience
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11.0626 Noncompetitive Condition.	Appendix B2	– Termination for Default (Goods and Services)
11.0627 Emergency Procurement.	Appendix C	– Equal Opportunity
11.0628 Sole Source Procurement Of Medical And Pharmaceutical Supplies.	Appendix D	– Anti-Kickback Statute
11.0629 Cancellation of Solicitation.	Appendix E	– Davis-Bacon Act
11.0630 Qualifications and Duties.	Appendix F	– Contract Work Hours and Safety Standards Act – Overtime Compensation
11.0631 Prequalification.	Appendix G	– Clean Air and Water
11.0632 Types of Contracts.	Appendix I	– Examination of Records
11.0633 Definition	Appendix J	– Patents
11.0634 Duties of the LBJ Chief Procurement Officer		
11.0635 Maximum Practicable Competition		
11.0636 Use of Specifications		
11.0637 Brand Name or Equal Provision		
11.0638 Specifications Prepared by Architects and Engineers		
11.0639 Procurement of Construction And Architect-Engineer Services – Construction – Invitation for Bids		

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Editors Note: 2020 Edition of Rules omitted Chapters 5 and 6 of Title 11. Recovered documents show the full text of the aforementioned omissions.

11.0601 Short Title.

The policies codified in this chapter shall be known and cited as the LBJ Tropical Medical Center Procurement Policy.

History: Rule 8, eff. March 3, 1999.

11.0602 Authority.

The rules in this policy are promulgated pursuant to the authority granted under Title 13 ASCA and Public Law 25-20.

History: Rule 8, eff. March 3, 1999.

11.0603 Purpose.

The purpose of this policy is to prescribe uniform rules necessary to fully implement Title 13 ASCA and Public Law 25-20.

History: Rule 8, eff. March 3, 1999.

11.0604 Definitions.

As used in this policy, the words or acronyms in this section shall have the following meanings unless the context otherwise requires.

- A. “LBJ” means the LBJ Tropical Medical Center.
- B. “Title 13 ASCA” and “Public Law 25-20” means the revised Title 13 ASCA, Sections 13.0101 to 13.0117, creating the American Samoa Medical Center Authority, enacted by the Legislature of American Samoa on January 12, 1998 as Public 25-20.
- C. “Chief Procurement Officer” (CPO) for LBJ Tropical Medical Center is the Chief Financial Officer (CFO) pursuant to Section 13.0111 ASCA and Public Law 25-20.
- D. “Construction” means the process of building, altering, repairing, improving, or demolishing of a structure or building, or improvements commonly known as “capital improvements”. It does not include the routine maintenance of existing structures, buildings, or real property.
- E. “Contract” means all types of agreements, whatever they may be called, for procurement.

- F. “Contractor” means a person or business having a contract with the LBJ Tropical Medical Center.
- G. “Employee” means an individual receiving compensation for personal services from LBJ Tropical Medical Center, including salaried and unsalaried individuals.
- H. “Goods” means all property, including but not limited to equipment, materials, supplies, and all other tangible personal property of any kind or nature, printing, insurance, leases or real and personal property, and sale or other disposal of real and personal property of any kind or nature.
- I. “Division” means a unit of LBJ Tropical Medical Center, under the supervision of a department head who reports to the Chief Executive Officer.
- J. “Rules” or “Policies” means rules adopted under authority of this policy in accordance with the provisions of the Administrative Procedure Act, Section 4.1001 ASCA, et. seg., Section 13.0111 ASCA, and Public Law 25-20.
- K. “CEO” means the Chief Executive Officer of LBJ Tropical Medical Center.
- L. “Grant” means the furnishing by government of assistance, whether financial or otherwise, to any person to support a program authorized by law.
- M. “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- N. “Person” means an individual, sole proprietorship, joint venture, corporation, other unincorporated association, or a private legal entity.
- O. “Procurement” means buying, purchasing, renting, leasing or acquiring construction, goods, or services. It also includes all functions that pertain to the obtaining of construction, goods or services, including description of requirements, selection and solicitation of sources, preparation and award of contracts and all phases of contract administration. It does not include employment contracts with individuals supervised by LBJ management.

- P. “Reasonable”, in reference to a bidder, means a person who has the capacity in all respects to perform fully the contract requirements, and the integrity and reliability which will assure good faith performance.
- Q. “Responsive”, in reference to a bidder, means a person who has submitted a bid which conforms in all material respects to the invitation for bids.
- R. “Service” means the furnishing of time, labor, or effort by a person other than an employee, and not involving the delivery of a specific end product other than reports, plans, and incidental documents.
- S. “Board of Directors” is the governing body of the LBJ Tropical Medical Center as provided under Title 13 ASCA and Public Law 25-20.
- T. “Contracting Officer” means the Chief Procurement Officer for LBJ Tropical Medical Center.

History: Rule 8, eff. March 3, 1999.

11.0605 Applicability.

- A. Except as otherwise specified by law this policy applies to all expenditures of public funds including federal assistance, moneys and enterprise funds under any contract. This policy also applies to the disposal of goods and properties.
- B. This policy does not apply to either grants or assignments by LBJ to specific divisions, departments, programs or other bodies within the Medical Center.
- C. This policy may not prevent any LBJ body from complying with the terms and conditions of any grant, gift, bequest, or cooperative agreement, except that no such agreement shall be used to authorize sole source procurements or other violations or this policy.
- D. Where there is a discrepancy between the provision of the Policy and the laws of the Territory, the laws shall have precedence over these rules.

History: Rule 8, eff. March 3, 1999.

11.0607 Centralization of Procurement Authority.

Except as otherwise provided by law or executive order, all rights, duties and authority related to the procurement of construction, goods and services, and the management, control, warehousing, sale, and disposal of construction, goods and services, now vested in, or exercised by the Territory of American Samoa Chief Procurement Officer are hereby delegated to the LBJ Chief Procurement Officer, as provided by Section 13.0111 ASCA, and Public Law 25-20.

History: Rule 8, eff. March 3, 1999.

11.0608 Chief Procurement Officer.

- A. Location. The LBJ Chief Procurement Officer shall be the Chief Financial Officer. The LBJ Procurement Office shall perform the functions of procurement, contracting and policy development and review.
- B. Appointment and Qualifications. The LBJ Board of Directors shall appoint the Chief Financial Officer as prescribed in Public Law 25-20. The function of the Chief Procurement Officer is delegated to the CFO.
- C. Tenure and Removal. The Chief Procurement Officer shall be a full time employee of LBJ who serves at the pleasure of the Board of Directors.
- D. Authority and Duties. The LBJ Chief Procurement Officer shall serve as the main procurement official of the Medical Center and is authorized to:
 - 1. Develop rules and procedures governing the internal functions of procurement.
 - 2. Adopt and maintain rules for LBJ as necessary and appropriate for the implementation of Section 13.0111 ASCA governing the procurement, management, control, and disposal of all construction, goods, and services procured by LBJ. A separate manual of all rules and procedures, and amendments to the rules and procedures, shall be maintained or caused to be maintained by the LBJ Chief Procurement Officer. The manual of rules

and procedures shall be open to inspection and copying during normal business hours.

E. Except as otherwise specifically provided in this Policy, in accordance with rules and policies adopted:

1. procure or supervise procurement of all construction, goods, and services needed by the LBJ Tropical Medical Center.
2. exercise general supervision and control over all inventories of goods belonging to LBJ.
3. sell, trade, or otherwise dispose of goods surplus to LBJ.
4. establish and maintain programs for the inspection, testing and acceptance of construction, goods and services.
5. Assist in providing technical assistance, including training, necessary to ensure uniform implementation of the rules of this Policy.
6. Supervise the conduct of management reviews to monitor compliance with the rules in the Policy and initiate corrective action, as required.

History: Rule 8, eff. March 3, 1999.

11.0609 Centralized Procurement Authority.

Delegation of Authority. The LBJ Chief Procurement Officer may delegate authority to execute and administer contracts to a procurement officer or other LBJ official who is responsible for administering procurement on behalf of LBJ under the provisions of this policy. The LBJ Procurement Officer may delegate authority to supervise and control inventories belonging to LBJ. The LBJ Chief Procurement Officer may also suspend, limit, or revoke any delegation of authority made under the provisions of this sub-section.

History: Rule 8, eff. March 3, 1999.

11.0610 Coordination.

Under procedures adopted by the CPO, and except when a special evaluation or selection group is appointed, the CIP or Equipment Committee and Board of Directors, shall review and approve the

procurement of all construction, goods, and services which exceed \$25,000 prior to execution of contracts. The Board of Directors may also review contracts of lesser value at its discretion.

History: Rule 8, eff. March 3, 1999.

11.0611 Duties of the Attorney General.

- A. The Attorney General, or such officer as the Attorney General may designate, shall serve as legal counsel and provide legal services to the LBJ Chief Procurement Officer.
- B. The Attorney General shall approve all LBJ contracts exceeding \$10,000 as to legal sufficiency prior to execution, regardless of the authority of execution and administration.

History: Rule 8, eff. March 3, 1999.

11.0612 Duties of the LBJ Chief Procurement Officer.

- A. The LBJ Chief Procurement Officer shall, or cause to develop, issue and maintain procedures governing the preparation and initiation of requisitions for the purchase of construction, goods, and services by LBJ Tropical Medical Center.

History: Rule 8, eff. March 3, 1999.

11.0613 Duties of the LBJ Chief Financial Officer.

- A. The Chief Financial Officer shall certify as to the availability of funding for all requisitions involving the expenditure of public funds, irrespective of source.
- B. It shall be the policy of LBJ to identify in advance, to the extent feasible, planned purchases and procurement actions for each fiscal year to:
 1. Avoid the purchase of unnecessary or duplicative goods or services;
 2. Consider consolidating or breaking out procurement requirements to obtain a more economical purchase;
 3. Consider lease versus purchase alternatives to determine the most economical approach;

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4. Ensure adequate resources are available and sufficient time is allotted to insure delivery of needed goods and services.
- C. The head of each LBJ division initiating requisitions shall submit to the Chief Procurement Officer, by October 1st of each year, a list of purchases planned for the fiscal year (other than small purchases) including:
1. a description of the purchase;
 2. estimated dollar amount;
 3. required delivery date; and
 4. estimated date for requisition initiation.
- D. The list of planned purchases shall be updated on a quarterly basis by the head of each LBJ division initiating the requisitions.

History: Rule 8, eff. March 3, 1999.

11.0614 Definitions.

As used in this article, the following definitions shall apply:

- A. “Bidding time” means the time between the issuance of solicitation and opening of bids or the due date for proposals.
- B. “Cost-reimbursement contract” means a contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and a fee, if any.
- C. “Firm-fixed price contract” means a contract under which a contractor agrees to perform the work required for a price which is not subject to any adjustment.
- D. “Offeror” means a person who has submitted a proposal in response to a request for proposal.
- E. “Purchase description” means the words used in solicitation to describe the construction, goods, or services to be procured.
- F. “Request for proposals” (or RFP”) means all documents utilized for soliciting proposals under the negotiation method of procurement.
- G. “Exception” means excluding from the bidding process.

- H. “Sole source” means a vendor is selected solely on the product it produces, owns, holder of product exclusive agreement, and authorizes to represent:
- I. “Medical Supply Officer” means an assigned representative of the LBJ Chief Procurement Officer for LBJ.

History: Rule 8, eff. March 3, 1999.

11.0615 Methods of Source Selection.

- A. It is the policy of LBJ Tropical Medical Center to conduct all purchases and procurement actions in a manner that provides maximum open free competition.
- B. Unless otherwise specified by law, all LBJ contracts shall be executed by competitive sealed bidding, in accordance with Subsection 4.02 (d), except as provided in:
 1. Subsection 4.02 (c) for small purchases;
 2. Subsection 4.02 (e) for negotiation;
 3. Subsection 4.02 (f) for emergency procurement; or,
 4. Subsection 4.02 (g) for medical and pharmaceutical supplies.

History: Rule 8, eff. March 3, 1999.

11.0616 Small purchases.

Any procurement not exceeding \$10,000, including purchases made using imprest funds shall be made using simplified small purchase procedures promulgated by the Chief Procurement Officer. Procurement requirements may not be artificially divided so as to constitute a small purchase under this subsection and thus circumvent other source selection rules required under this section.

History: Rule 8, eff. March 3, 1999.

11.0617 Noncompetitive Bidding.

Contracts shall be awarded by competitive sealed bidding, except as provided in Subsection 4.02 (b), provided that the following conditions are present:

1. A clear, complete, accurate and realistic purchase description or specification for the good or service to be procured is available;

2. The purchase description or specification does not contain unnecessarily restrictive requirements or features which may unduly limit the number of bidders;
3. Two or more responsible bidders are willing and able to submit bids for the procurement; and
4. The procurement requirements can be defined with sufficient accuracy so that a firm-fixed-price contract can be executed, and selection of the successful bidder can be made principally on the basis of price.

History: Rule 8, eff. March 3, 1999.

11.0618 Invitation for bids.

- A. An invitation for bids shall be issued and shall include:
 1. Invitation for bids number.
 2. Date of issuance.
 3. Name, address, and location of issuing office, including room and building where bids must be submitted.
 4. Date, hour, and place of bid opening.
 5. A purchase description and/or specification for the goods or services to be procured, in sufficient detail to permit full and open competition and allow bidders to properly respond to the invitation. Descriptions and specifications shall conform to the requirements in Section 5.04.
 6. Quantity of goods or services to be furnished.
 7. Time, place, and method of delivery or performance requirements.
- B. All requirements to be fulfilled by the bidder, and any other factor (if any) to be used in evaluating bids.
- C. Clauses required by Subsection 6.01(d) or Section 7.01.
- D. Bonding requirements for construction as required by Subsection 8.03(b).
- E. Local preference evaluation factors when required by Section 8.03.

- F. Public notice of the invitation for bids shall be made at least one week prior to the issuance date of the invitation. Such notice shall be furnished to all suppliers of the goods or services being procured who have requested to be included in bidders mailing list; shall be published in a newspaper of general circulation in American Samoa, and foreign newspapers if required; and displayed at the LBJ Procurement Office, the U.S. Post Office, and at other appropriate public places. The notice shall contain:
 1. Invitation for bids number.
 2. Adequate description of the types and quantities of goods and services to be furnished.
 3. Information on how to obtain copies of the invitation for bids, including any changes as required by Subsection 6.01(a).
- G. A responsible time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of LBJ Tropical Medical Center. A bidding time of 30 calendar days shall be provided, unless the Chief Procurement Officer determines that a shorter period is reasonable and necessary.
- H. A list of potential bidders and suppliers requesting copies of invitations for bids in response to public notices shall be compiled and maintained by the Chief Procurement Officer.
- I. Bids, when received at the specified location prior to the time set for opening, shall be kept unopened and secure in a locked receptacle. Bids which are opened by mistake shall be resealed, signed by the party responsible, and delivered to the Chief Procurement Officer. No information contained in the bid shall be disclosed prior to the official opening.
- J. The bid opening official designated by the Chief Procurement Officer shall determine when the time established for bid opening in the invitation for bids has arrived, and shall so declare to those present, including at least one witness from LBJ staff. All bids received prior to the time set for bid opening shall then be publicly opened, read aloud to the persons present, and recorded as to

the name of the bidder and the amount of each bid.

- K. The invitation for bids number, bid opening date, names and addresses for bidders, prices bid, and bid evaluation as may be required by Section 8.03 shall be entered in an abstract or record and shall be open to public inspection by interested persons. The record shall be completed as soon as practicable after the bid opening, and the bid-opening officials certify the accuracy of the record.
- L. Bids shall be unconditionally accepted without alteration or correction except as authorized under paragraph (10) or (11). Bids shall be evaluated based on the requirements set forth in the invitation for bids, which may include criteria as is necessary to reasonably permit a determination as to the acceptability of the bid. No criteria may be used in bid evaluation that are not set forth in the invitation for bids. LBJ shall not be obligated to accept lowest bid as the sole criteria for selection.

History: Rule 8, eff. March 3, 1999.

11.0619 Rejection Of Bid.

- A. A bid may be rejected for any of the following:
1. Failure to conform to essential requirements of the invitation for bids, such as specifications or time of delivery.
 2. Imposition of conditions or restrictions in the bid which modify requirements of the invitation, or limit the bidders liability to LBJ. For example, bids shall be reflected in which the bidder:
 - a. protects against future changes in condition, such as increased costs;
 - b. fails to state a price and indicates that price shall be the price in effect at time of delivery;
 - c. states a price, but qualifies it as subject to price in effect at time of delivery; or
 - d. limits the rights of LBJ under any invitation for bids provision. A low bidder may be requested to delete objectionable limitations from a bid

provided such conditions do not affect price, quantity, quality, or delivery of the goods or services offered.

- e. Unreasonableness as to price.
- f. A low bid from a non-responsible bidder as determined in accordance with Subsection 6.01(b).
- g. Failure to furnish a bid guarantee as required by Subsection 6.01(b).

History: Rule 8, eff. March 3, 1999.

11.0620 Correction of Bid.

- A. Correction or withdrawal of inadvertently erroneous bids, before or after award, or cancellation of awards or contracts based on such bid mistakes must be supported by a written determination made by the Chief Procurement Officer and approved by the Attorney General or designee. After bid opening, no changes in bid price or other provisions of bids prejudicial to the interest of the LBJ or fair competition shall be permitted. A suspected bid mistake requires LBJ to request confirmation of the bid. Where there is an appearance of an obvious mistake, the bidder shall be requested to reconfirm the bid prior to award. In such an instance, if the bidder alleges as error LBJ shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (a) or (b) below.
- B. Correction of bid shall only be permitted when:
1. An obvious clerical mistake is clearly evident from examining the bid document. Examples of such mistakes are: obvious misplacement of a decimal point; errors in extension of unit prices; errors in addition; and obvious mistakes in designation of a unit; or
 2. The otherwise low bidder alleges a mistake and the intended bid is evident from the bid document or is otherwise supported by clear and convincing evidence in the form of bid worksheets or other information which supports the bid intended and the bid, as corrected remains the low bid. A low bidder may not be permitted to correct a bid mistake resulting from an error in judgment.

History: Rule 8, eff. March 3, 1999.

11.0621 Withdrawal of Bid.

Withdrawal of a bid shall only be permitted where the otherwise low bidder alleges a mistake and there is clear and convincing evidence as to the existence of a mistake but not as to the bid intended.

History: Rule 8, eff. March 3, 1999.

11.0622 Cancellation Of Awards.

Cancellation of awards or contracts shall only be permitted when:

1. evidence of the existence of bid mistakes is not discovered until after the award.
2. there exists no clear and convincing evidence to support the bid intended; and
3. performance of the contract at the award price would be unconscionable.

History: Rule 8, eff. March 3, 1999.

11.0623 Awarding of Contract.

- A. A contract shall be awarded with reasonable promptness by written notice to the lowest reasonable, responsive, responsible bidder whose bid fully meets the requirements of the invitation for bids and the rules set forth in this Chapter. Unsuccessful bidders shall be promptly notified.
- B. After the opening of bids, if all bids exceed available funds as certified, and the lowest responsible bidder does not exceed those funds by more than 5%, and time and economic considerations preclude re-solicitation of the work at a reduced scope, the LBJ Chief Procurement Officer (or designated officer) is authorized to negotiate an adjustment of the bid price, including changes in invitation for bid requirements, with the lowest responsive and responsible bidder in order to bring the bid price within the amount of the available funds. The negotiation of the price and changes in bid requirements shall be documented in a written determination made by the LBJ Chief Procurement Officer (or designated officer) and included in the contract file.

History: Rule 8, eff. March 3, 1999.

11.0624 Competitive Negotiation.

- A. Contracts may be awarded by competitive negotiation when the LBJ Chief Procurement Officer determines in writing that the use of competitive sealed bidding under subsection 4.02(d) is not practicable because of the nature of the goods or services to be procured.
- B. A request for proposals (RFP) shall be issued and shall include:
 1. RFP number.
 2. Date of issuance.
 3. Name, address, and location of issuing office including address for submission of proposals.
 4. Date for submission of proposals.
 5. Description of the required goods or services to be procured.
 6. Evaluation criteria to be used by LBJ in evaluating proposals on a technical and cost basis.
 7. The relative importance of the evaluation criteria shall be stated so all offerors clearly understand the basis award.
 8. Instructions for offerors to use in submitting technical and cost proposals, including number of copies required.
 9. Quantity of goods or services to be furnished.
 10. Time, place, and method of delivery to performance requirements.

History: Rule 8, eff. March 3, 1999.

11.0625 Clauses Required By Section 7.01.

- A. Public notice shall be made in accordance with paragraph 4.02(d)(3).
- B. Proposal times shall conform to the requirements in paragraph 4.02(d)(4).
- C. A list of prospective offerors shall be prepared in accordance with requirements of paragraph 4.02(d)(5).

- D. Proposals shall be opened and used only by LBJ personnel authorized to participate in evaluation. No information contained in a proposal shall be disclosed to the public until after the contract award. Proposals shall be protected so as to avoid disclosures of contents to competing offerors.
- E. Proposals shall be evaluated by LBJ in accordance with the evaluation criteria in the request for proposals. No other criteria may be used. The results of the evaluation shall be documented and a determination shall be made by the LBJ Chief Procurement Officer of those responsible offerors whose proposals are reasonably susceptible of being selected for award. The determination shall be included in the contract file.
- F. Discussions. Discussions shall be conducted with those responsible offerors whose proposals are determined by the LBJ Chief Procurement Officer to have a reasonably susceptible chance of being selected for award. These discussions shall be conducted for the purpose of obtaining clarification from the offeror on its proposal to ensure full understanding of, and responsiveness to, the request for proposal requirements, discussions shall be conducted individually with each offeror and care shall be exercised to ensure full understanding of, and responsiveness to, the request for proposal requirements, discussions shall be conducted individually with each offeror and care shall be exercised to ensure that no information derived from competing offerors proposals and be afforded the same time period to revise their proposals and submit a best final to LBJ based on the discussions.
- H. Final Offers. Best and final offers received from offerors shall reevaluated by LBJ using the evaluation criteria contained in the request for proposals and the results shall be documented and included in the contract file.
- I. Award. Award shall be made to the responsible offeror whose proposals is determined in writing by the LBJ Chief Procurement Officer to be most advantageous to LBJ considering price and the

evaluation criteria contained in the request for proposal. Unsuccessful offerors shall be promptly notified.

History: Rule 8, eff. March 3, 1999.

11.0626 Noncompetitive Condition.

- A. Conditions for use. Contracts may be awarded without competition when the LBJ Chief Procurement Officer determines in writing that award of a contract is unfeasible under small purchase, competitive sealed bidding, or competitive negotiation procedures and that there is only one source available to furnish the required construction, goods, or services. The written determination shall be prepared by the requisition initiator and shall contain the following information:
 - 1. The unique capabilities of the source that are required, why they are required, and the degree of consideration given to other sources.
 - 2. The facilities or equipment of the source that are required, why they are required and if they are unavailable from other sources.
 - 3. Whether the work is a continuation of a contract work previously performed by the source and the additional time, expense, or duplication of effort required to bring another source up to that level.
 - 4. Whether drawings or specifications suitable for competitive sealed bidding or competition negotiation are available. If unavailable, explain why and the time and expense required to develop them.
 - 5. Other sources given consideration and specific reasons why they lack qualifications required for the procurement.

History: Rule 8, eff. March 3, 1999.

11.0627 Emergency Procurement.

- A. Conditions for use. Notwithstanding any other provision of this chapter, the CEO of LBJ Tropical Medical Center may make or authorize emergency procurement when there exists a threat to public health, welfare, or safety under emergency conditions as defined under section

26.0105(d) ASCA, or when there is an emergency need for LBJ, as provided in PL 25-20.

- B. Documentation. A written determination describing the basis for the emergency, the extent of competition obtained, and the basis for selection of a particular contractor shall be prepared, reviewed by the Attorney General, and approved by the LBJ Chief Executive Officer before contract award. The determination shall be included in the contract file.

History: Rule 8, eff. March 3, 1999.

11.0628 Sole Source Procurement Of Medical And Pharmaceutical Supplies.

- A. The Medical Supply Officer is authorized to negotiate for the best price on a sole source basis for the following reasons: emergency need, physician preference, reliability of service, and distribution system conducive to the freight delivery system.
- B. The Medical Supply Officer is authorized to arrange for the best-uninterrupted delivery schedule with the vendor selected.

History: Rule 8, eff. March 3, 1999.

11.0629 Cancellation of Solicitation.

An invitation for bids or requests for proposals may be canceled, and any or all bids or proposals may be rejected, when such action is determined in writing by the LBJ Chief Procurement Officer to be in the best interest of LBJ based on based on:

- A. Inadequate or ambiguous specification contained in the solicitation;
- B. Specification which have been revised;
- C. Goods or services being procured which are no longer required;
- D. Inadequate consideration given to all factors cost to LBJ in the solicitation;
- E. Bids proposals received indicate that the needs of LBJ can be unreasonable prices; or
- F. All otherwise acceptable bids or proposals received are at unreasonable prices; or
- G. Bids were collusive (see subsection 10.03(I)).

History: Rule 8, eff. March 3, 1999.

11.0630 Qualifications and Duties.

- A. Responsibility factors. To be determined responsible, a prospective contract must:
 - 1. have adequate financial resources to perform the contract, or the ability to obtain them;
 - 2. be able to comply with the required delivery or performance schedule;
 - 3. have a satisfactory performance record;
 - 4. have the necessary organization, experience, and skills, (or the ability to obtain them), required to successfully perform the contract;
 - 5. have the necessary production, construction, and technical equipment and facilities (or the ability to obtain them); and
 - 6. be otherwise qualified and eligible to receive an award under applicable laws and rules.
- B. Obtaining information. Prior to award, the LBJ official delegated authority to execute and administer a contract shall obtain information from the bidder of offeror necessary to make a determination of responsibility using the factors in paragraph (1) above. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with request to responsibility may be grounds for a non-responsibility determination under paragraph (4) below. Information furnished by bidder or offeror pursuant to this paragraph may not be disclosed outside of the LBJ Chief Procurement Officer without prior written consent by the offeror.
- C. Responsibility determination. The signing of a contract shall constitute a determination that the prospective contractor is responsible.
- D. Non-responsibility determination. When a bid or proposal on which a contract award would otherwise be made is rejected because the prospective contractor is found to be non-responsible, a written determination shall be signed by the LBJ official delegated authority to

execute the contract and shall state the basis for the determination. The determination shall be placed in the contract file.

History: Rule 8, eff. March 3, 1999.

11.0631 Prequalification.

Prospective suppliers of goods or services may be qualified for particular types of construction, goods, and services when determined necessary by the LBJ Chief Procurement Officer. Opportunity for qualification before solicitation shall be notified to suppliers.

History: Rule 8, eff. March 3, 1999.

11.0632 Types of Contracts.

- A. Use of cost-plus-a-percentage-of-cost and percentage of construction cost methods of contracting are prohibited.
- B. Normally, a firm-fixed-price contract shall be used unless use of cost reimbursement contract is justified under subsection (c) below.
- C. A cost reimbursement contract may be used when the LBJ Chief Procurement Officer determines in writing that:
 - 1. Uncertainties in the work to be performed make the cost of performance too difficult to estimate with the degree of accuracy required for a firm-fixed-price contract;
 - 2. Use of a firm-fixed-price contract could seriously affect the contractor's financial stability or result in payment by LBJ for contingencies that never occur; or
 - 3. Use of the cost reimbursement contract is likely to be less costly to LBJ
- H. Prohibition against contingent fees as required by subsection 10.03(f). Prohibition against contingent fees as required by subsection 10.03(g).
- I. Prohibition against contingent fees as required by subsection 10.03(I).

History: Rule 8, eff. March 3, 1999.

11.0633 Definition

As used in this article "Specification" means any description of the physical or functional

characteristics, or of the nature of a supply, service, or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service, or construction item for delivery.

History: Rule 8, eff. March 3, 1999.

11.0634 Duties of the LBJ Chief Procurement Officer

The LBJ Chief Procurement Officer shall be responsible for monitoring specifications for construction, goods, and services to be procured, but may delegate this responsibility in writing to an official who has been delegated authority to execute and administer contracts.

History: Rule 8, eff. March 3, 1999.

11.0635 Maximum Practicable Competition

All specifications shall be written to promote the overall economy for the purpose intended, encourage maximum competition in satisfying LBJ's minimum needs, and shall not be unduly restrictive of competition.

History: Rule 8, eff. March 3, 1999.

11.0636 Use of Specifications

- A. Specifications shall be written so as to specify a particular product or particular feature of a product peculiar to one manufacturer unless that particular products or feature is essential to LBJ's requirements and products or other companies lacking the particular feature would not meet the minimum needs of the LBJ Tropical Medical Center.
- B. Specifications shall, whenever practicable, include a description the qualitative nature of the construction material, good, or service to be procured and when necessary, set forth those minimum essential standards and characteristics to which it must conform to satisfy its intended use.
- C. When it is impracticable or uneconomical to make a clear and accurate description of the required good or service, a "brand name or equal" description may be used as provided in section 10.244 as means to define the performance or other salient characteristics of the requirement.

History: Rule 8, eff. March 3, 1999.

11.0637 Brand Name or Equal Provision

- A. “Brand name or equal” descriptions shall be used only when it is determined that it is impracticable or uneconomical to make a clear, accurate, and detailed description of LBJ’s requirements without referring to particular product.
- B. “Brand name or equal” description used in specifications shall set forth those salient physical, functional, or other characteristics of the referenced product which are determined to be essential to meet the minimum needs of LBJ Tropical Medical Center.

Such descriptions shall include:

- (1) Complete identification of the item required.
- (2) Applicable model, make, or catalog number for each brand name reference, and identify of the commercial catalog in which it appears.
- (3) Name of manufacturer producer, or distributor of each brand name product referenced and address;
- (4) Instructions for bidders or offerors to furnish for an “equal” product to be offered, the name of the product, manufacturer, model number, and all other information required for LBJ to determine that the offered product fully meets the salient characteristic requirements listed in the “brand name or equal” description.

History: Rule 8, eff. March 3, 1999.

11.0638 Specifications Prepared by Architects and Engineers

The requirements of this article shall apply to all specifications prepared by architects and engineers for public contracts.

History: Rule 8, eff. March 3, 1999.

11.0639 Procurement of Construction And Architect-Engineer Services – Construction – Invitation for Bids

- A. Deposit. The LBJ Chief Procurement Officer, or other official designated authority to execute and

administer construction contracts, shall determine the amount of deposit required for potential bidders to obtain the invitation for bids.

- B. Contents. The invitation for bids shall be prepared in accordance with paragraph 4.02(d)(2). In addition, the following additional items shall be included in the form prescribed by the LBJ Chief Procurement Officer.
- C. Notice to Bidders. General information regarding project information.
- D. Instructions to Bidders. Information on the preparation of bids, bid security requirements (subsection 6.01(b), and forms and certifications to be submitted with the bid.
- E. General conditions. Standard contract clauses governing the performance of work.
- F. Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed.
- G. Technical specifications. Specifications governing the technical aspects of the work to be performed.
- H. Local Bidder preference. Evaluation of local bidder preference as required under section 8.03.

History: Rule 8, eff. March 3, 1999.

11.0640 Bid Security

- A. Bid security shall be required for all competitive sealed bidding construction contracts where performance and contracts bonds are required. Bid security shall be on a bid bond (GSA Standard Form 24).
- B. Amount. Bid security shall in an amount to equal at least 5% of the amount of the bid or other amount as specified in the invitation for bids depending upon the source of funding.
- C. Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid accordance with subparagraph 4.02(d)(10)(E).

History: Rule 8, eff. March 3, 1999.

11.0641 Contract, Performance, Payment and Other Bonds

- A. Contracts. A contract bond is required in cash, certified check, cashier’s check, or other similar form satisfactory to LBJ when the amount of the contract does not exceed \$100,000.
- B. Performance and payment bonds. A performance bond and payment bond are required in cash, certified check, cashier’s check or other similar form satisfactory to LBJ when the contract exceeds \$100,000.
- C. Amount. The contract, performance, and payment bonds shall be in an amount equal to the contract.
- D. Other Bonds. Other bonds, such as labor and materials bonds, may be required in order to protect the interests of LBJ, or to meet requirements of OMB Circular 110, section 13.36(h) for grant funded projects. Such bonds shall be required as determined by the LBJ official delegated authority to execute and administer construction contracts.

History: Rule 8, eff. March 3, 1999.

11.0642 Contracts as Prescribed

- A. For contracts exceeding \$10,000, “Termination for Convenience” (Appendix A).
- B. For contracts exceeding \$10,000, “Termination for default” (Appendix B).
- C. For contracts exceeding \$10,000, “Equal Opportunity” (Appendix C).
- D. “Anti-Kickback Statute” (Appendix D).
- E. When required by Federal grant program legislation and the contract exceeds \$2,000, “Davis Bacon Act” (Appendix E).
- F. Where applicable for contracts in excess of \$2,000, “Contract Work Hours and Safety Standards Act – (Appendix F).
- G. For contracts over \$100,000, “Clean Air and Water” (Appendix G) unless this requirement has been waived by EPA.
- H. Prohibition against contingent fees as required by subsection 10.03(f). Prohibition against

contingent fees as required by subsection 10.03(g).

- I. Prohibition against contingent fees as required by subsection 10.03(i).

History: Rule 8, eff. March 3, 1999.

11.0643 Fiscal Responsibility.

Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the LBJ’s responsible officer or other official responsible for monitoring and reporting upon the status of the costs of the total project budget or contract budget, as to the effect of the contract modification, change order, or adjustment in contract price on the total project budget or the total contract budget. In the event that the certification of the LBJ’s fiscal officer or other responsible official discloses a resulting increase in the total project budget and/or the total contract budget, such contract modification, change order or adjustment in contract price shall not be made unless sufficient funds are available therefore, or the scope of the project or contract is adjusted so as to permit the degree of completion that is feasible within the total project budget and/or total contract budget as it existed prior to the contract modification, change order, or adjustment in contract price under consideration; provided, however, that with respect to the validity, as to the contractor, of any executed contract modification, change order, or adjustment in it shall be presumed that there has been compliance with the provisions of this subsection.

History: Rule 8, eff. March 3, 1999.

11.0644 Architect–Engineer Services.

- A. Applicability. Architect-engineer services shall be procured as provided in this section except as authorized by subsections 4.02 c (small purchases), 4.02(e)(2) (non-competitive negotiation) or subsection (4.02) (f) (emergency procurement).
- B. Policy. It is the policy to publicly announce all requirements for architect-engineer services and negotiate contracts on the basis of demonstrated competence and qualifications at a fair and reasonable price.

- C. Selection. The LBJ Chief Procurement Officer or other official delegated authority to execute and administer architect-engineer contracts shall maintain files of current statements of qualifications or architect-engineer firms. After public announcement of a requirement for architect-engineer services, current statements shall be reviewed together with those that may be submitted by other firms in response to the announcement. Discussions shall be conducted with at least three of the firms regarding the contract requirements and technical approach and a selection made therefrom, in order of preference, of no less than three firms determined to be the most highly qualified to perform the service required.
- D. Negotiation. The LBJ Chief Procurement Officer or other official delegated authority shall negotiate a contract with the highest qualified architect-engineer for a price determined to be fair and reasonable to LBJ. If a fair and reasonable price cannot be negotiated, negotiations shall be terminated and negotiations shall be undertaken with the second highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the selected firms, the LBJ Chief Procurement or other official with delegated authority shall select additional firms in order of competence and qualifications and continue negotiations until a fair and reasonable price is agreed upon.
- E. The LBJ Chief Procurement Officer may promulgate additional contract provisions as required for construction or architect-engineer contracts.
- D. For contracts in excess of \$2,500 which involve employment of mechanics or laborers, “Contract Work Hours and Safety Standard Act” (Appendix F).
- F. For negotiated contracts, “Examination of Records”.
- G. For contracts over \$100,000 “Clean Air and Water” (Appendix G).
- H. For contracts involving research, development, experimental or demonstration work, “Patents” (Appendix J).
- I. Prohibition against gratuities and kickbacks as required by subsection 7.01 (f).
- J. Prohibition against contingent fees as required by subsection 7.01.
- K. Prohibition against collusion as required by subsection 7.01.

History: Rule 8, eff. March 3, 1999.

11.0646 Duties of the LBJ Chief Procurement Officer.

The LBJ Chief Procurement Officer may promulgate additional contract provisions as are required for contracts for goods and services. The LBJ Chief Procurement Officer may require bid bonds and performance and payment bonds on contracts other than construction contracts upon a written determination that such additional security is necessary to protect LBJ’s interest.

History: Rule 8, eff. March 3, 1999.

11.0647 Policy.

It shall be the policy of LBJ to use its procurement rules to promote local business investment, activity, and competitiveness with other non-local business by decreasing cash outflow and assisting to overcome the limitations of size, isolation from the mainstream of commercial and financial activities, lack of diversified industrial bases, and inadequate availability of venture capital which have stymied business development. LBJ shall encourage economic activities and business development to the maximum extent feasible without compromising effective and efficient procurement practices including competition.

History: Rule 8, eff. March 3, 1999.

11.0645 Required contract Provisions.

The following clauses shall be included in all contracts as prescribed:

- A. For contracts in excess of \$10,000, “Termination for Convenience” (Appendix A).
- B. For contracts in excess of \$10,000, “Termination for Default” (Appendix B2).
- C. For contracts in excess of \$10,000, “Equal Opportunity” (Appendix C).

History: Rule 8, eff. March 3, 1999.

11.0648 Definitions.

As used in this article, the following definitions apply:

- A. “Local bidder” for procurement of goods and services means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or private legal entity which has a valid American Samoa business license and, if required, a foreign corporation permit to transact business in American Samoa, has its principal place of business in American Samoa, and has owned, operated, or maintained an office, store, warehouse, or other facility in American Samoa for at least six months, has, or has the ability to obtain, necessary technical support services, as may be required, for timely installations, maintenance, warranty, and repair of goods to be furnished in the bid.
- B. “Local bidder” for procurement of construction means a sole proprietorship which is wholly owned by an American Samoan or a permanent resident as defined in 41.0502 ASCA, or a partnership, joint venture, or other unincorporated association which is wholly owned by those persons and has submitted a bid in majority owned by those persons and has submitted a bid in response to an invitation for bids for construction.
- C. “Off-island bidder” means a person submitting a bid in response to an invitation for bids who does not qualify as a “local bidder” as defined in (a) and (b) above.

History: Rule 8, eff. March 3, 1999.

11.0649 Local Bidder Preference and Evaluation.

- A. For construction procurement where the contract value is estimated by LBJ at \$50,000 or less, the procurement shall be set aside and restricted to local bidders only. Bids received from off-island bidders will be rejected.
- B. For all construction procurement where the contract value is estimated by LBJ to exceed \$50,000, bids from off-island bidders shall be

evaluated after bid opening so as to give preference to responsive, responsible and reasonable local bidders by application of the following schedule of add-on percentages to the bid amount submitted by the lowest responsive, responsible, and reasonable off-island bidder:

1. Estimated value is between \$50,000 and \$100,000 add 10%.
 2. Estimated value is between \$100,001 and \$200,000 add \$10,000 plus 5%.
 3. Estimated value exceeds \$200,000 add \$15,000.
- C. For all procurement of goods or service (other than construction for which qualifying bids are received from both local bidders and off-island bidders) the bids shall be evaluated after bid opening so as to give preference to responsive, responsible and reasonable local bidder by application of the following schedule of add-on percentages to the bid amount submitted by the lowest responsive, responsible and reasonable off-island bidder:
 1. Estimated value up to \$10,000 add 25%.
 2. Estimated value \$10,001 to \$50,000 add \$2,500 plus 12% of amount in excess of \$10,000.
 3. Estimated value \$50,001 to \$100,000 add \$7,300 plus 10% of the amount in excess of \$50,000.
 4. Estimated value \$100,001 to \$200,000 add \$12,300 plus 5% of the amount in excess of \$100,000.
 5. Estimated value in excess of \$200,000 add \$17,300.
 - D. If, after the addition of the applicable add-on percentage amount, the bid submitted by the lowest responsive, responsible, and reasonable local bidder is equal to or less than the evaluated bid (bid plus applicable add-on percentage) of the lowest responsive, responsible, and reasonable off-island bidder, then the local bidder shall be awarded the contract.

- E. Procurement requirements may not be artificially divided or combined so as to circumvent the provisions of this section.
- F. The LBJ Chief Executive Officer may suspend or reduce a local preference set forth in this Section if he finds that such action is desirable or necessary in the public interest as a result of financial or economic conditions affecting directly or indirectly LBJ generally, for a period or periods not exceeding 18 months unless permanent modifications are proposed to the LBJ Board of Directors, or, if appropriate, the Legislature of American Samoa. Suspension or reduction shall be adopted under the Administrative Procedure Act, 4.1001 ASCA et. seq.

History: Rule 8, eff. March 3, 1999.

11.0650 Responsibilities.

The LBJ Chief Procurement Officer and other officials delegated authority to award and administer LBJ contracts shall be responsible for monitoring contract performance in accordance with the terms, conditions and specifications of the contract.

History: Rule 8, eff. March 3, 1999.

11.0651 Contract File Documentation.

For each contract awarded, an official contract file shall be established and contain the following information: Purchase requisition; Public Notice; Bid or offeror’s mailing list; Invitation for bids or request for proposals; Bid abstract or record, Determination of non-responsibility; when applicable; Evaluation results (negotiated procurement); Notice of award to unsuccessful bidders or offerors; Contract Noncompetitive determination (when applicable); Emergency procurement determination (when applicable); Cost-reimbursement contract determination (when applicable); and Basis for cost or price.

History: Rule 8, eff. March 3, 1999.

11.0652 Disputes and Appeals.

- A. Definition. “Dispute” means any disagreement between contractors or potential contractors and LBJ regarding an LBJ official’s decisions on mistakes-in-bidding, source selection, contract

interpretation, or termination for convenience or default.

- B. Requirements. All such disputes shall be submitted in writing to the LBJ official making the decision. The LBJ official shall acknowledge receipt of the notice of dispute within 5 working days of receipt, and shall render a final decision within 30 working days after receipt of the notice of dispute.
- C. Appeals of an LBJ officer’s final decision in a dispute may be made within 30 days of the date of the decision, provided such appeal is submitted in writing to the LBJ Chief Executive Officer. The CEO shall appoint a board of at least 3 persons knowledgeable of procurement to review the appeal and recommend appropriate action to the CEO. None of the board members shall have participated in the action under appeal. At least one of the board members shall be a qualified attorney. Hearing procedures and documentation shall be as set forth in the Administrative Procedure Act, Section 4.1025 et seq., and the rules.
- D. Limitation. A termination for default may only be converted to a termination for convenience as a result of a finding by the appeals board on behalf of the appellant.

History: Rule 8, eff. March 3, 1999.

11.0653 Ethical Conduct Standard For LBJ Employees And Contractors.

Public employment is a public trust. In governmental contracting, public employees shall discharge their duties impartially so as to assure fair competitive access to governmental procurement by responsible contractors and conduct themselves in a manner as to foster public confidence in the integrity of the government and LBJ Tropical Medical Center.

History: Rule 8, eff. March 3, 1999.

11.0654 Definitions.

As used in this article, the following definitions shall apply:

- A. “Confidential information” means any information which is available to an employee as a result of the employee’s status as an employee

of LBJ, and is not a matter of public knowledge or available to the public on request.

- B. “Conspicuously” means written in such special or distinctive format, print, or manner that a reasonable person against whom it is to operate ought to have noticed it.
- C. “Direct or indirect participation” means involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- D. “Financial interest” means ownership of any interest or involvement in any relationship from which, or as a result of which, a person within the past year has received, or is presently or in the future entitled to receive compensation; or holding a position in a business such as an officer, director, trustee, partner, employee, or the like, or holding any position of management.
- E. “Gratuity” means a payment, loan, subscription advance, deposit of money, service, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.

History: Rule 8, eff. March 3, 1999.

11.0655 Standards of Ethical Conduct.

- A. Ethical Standards for Employees. Any attempt to realize personal gain through public employment by conduct inconsistent with the proper discharge of the employee’s duties is a breach of a public trust. In order to fulfill this ethical standards, employees must meet the requirements of this section.
- B. Ethical Standards for Contractors. Any effort to influence any public employee to breach the standards of ethical conduct set forth in this section is also a breach of ethical standards.
- C. Employee Disclosure Requirements:
 - 1. Disclosure of Benefit received from Contract. Any employee who has, or obtains any LBJ contract with a business in which the employee has a financial interest

shall report such benefit to the LBJ Chief Procurement Officer or designee.

- 2. Failure to Disclose Benefit Received. Any employee who knows or should have known of such benefit and fails to report such benefit is in breach of the ethical standards of this section.
- D. Employee Conflict of Interest Policy. It shall be a breach of ethical standards for any employee to participate directly or indirectly in a procurement when the employee knows that: The employee or any member of the employee’s employee or employee’s relative by consanguinity or the third degree or closer has a financial interest pertaining to the procurement. A business or organization in which the employee or employee’s relative by consanguinity or the third degree or closer has a financial interest pertaining to the procurement; or any other person, business, or organization with whom the employee or employee’s relative by consanguinity or the third degree or closer is negotiating or has an arrangement concerning prospective employment is involved in the procurement. Discovery of Actual or Potential Conflict of Interest, Disqualification, and Waiver. Upon discovery of an actual or potential conflict of interest, an employee shall promptly file a written statement of disqualification and shall withdraw from further participation in the transaction involved. Use of Confidential Information. It shall be a breach of ethical standards for any employee or former employee knowingly to use confidential information for actual or anticipated personal gain, or for the actual or anticipated gain of any other person.

History: Rule 8, eff. March 3, 1999.

11.0656 Prohibition Against Gratuities and Kickbacks.

- A. It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, preparation,

request, influencing the content of advice, investigation, auditing or in any other advisory capacity in any proceeding of application, request for ruling, determination, claim or controversy, or other particular matter or a contract or subcontract, or to any solicitation or proposal therefore.

- B. It shall be a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.
- C. The prohibition against gratuities and kickbacks prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefore.

History: Rule 8, eff. March 3, 1999.

11.0657 Prohibition Against Contingent Fees.

- A. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a LBJ contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies for the purpose of securing business.
- B. Every person, before being awarded an LBJ contract, shall represent, in writing, that such person has not retained anyone in violation of this subsection. Failure to do so constitutes a breach of ethical standards.
- C. The representation prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefore.

History: Rule 8, eff. March 3, 1999.

11.0658 Restrictions On Employment.

- A. Present employees. It shall be a breach of ethical standards for any employee who is participating directly or indirectly in the procurement process to become or be, while such an employee, the employee of any person contracting with a LBJ body by whom the employee is employed.

- B. Restrictions on former employees in matters connected with their former duties. Permanent disqualification of former employee personally involved in a particular matter. It shall be a breach of ethical standards for any former employee knowingly act as a principal or as an agent for anyone other than LBJ in connection with any of the following:

1. judicial or other proceeding, application, request for a ruling, or other determination;
2. contract;
3. claim; or charge or controversy, in which the employee participated personally and substantially through decision, approval, disapproval, recommendation, rendering of advice, investigation, or otherwise while an employee, where LBJ is a party or has a direct and substantial interest.

History: Rule 8, eff. March 3, 1999.

11.0659 One Year Representation Restriction Regarding Matters For Which A Former Employee Was Officially Responsible.

It shall be a breach of ethical standards for any employee, within twelve months after cessation of the former employee's official responsibility, knowingly act as a principal, or as an agent for anyone other than LBJ, in connection with any:

1. judicial or other proceeding, application, request for a ruling, or other determination;
2. contract;
3. claim; or
4. charge or controversy, in matters which were within the employee's official responsibility, where LBJ is a party or has a direct or substantial interest.

History: Rule 8, eff. March 3, 1999.

11.0660 Disqualification Of Business When An Employee Has A Financial Interest.

It shall be a breach of ethical standards for a business in which an employee has a financial interest knowingly to act as a principal, or as an agent for anyone other than LBJ, in connection with any:

1. judicial or other proceeding, application, request for a ruling, or other determination;
2. contract;
3. claim; or charge or controversy, in which the employee either participates personally and substantially through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, or which is the subject of the employee's official responsibility, where LBJ is a party or has a direct and substantial interest.

History: Rule 8, eff. March 3, 1999.

11.0661 Selling To LBJ Within 6 Months After Termination Of Employment Is Prohibited.

It shall be a breach of ethical standards for any former employee to engage in selling or attempting to sell supplies, services, or construction to LBJ for six months following the date employment ceased. The term "sell" as used herein means signing a bid, proposal, or contract; negotiating a contract; contacting any employee for the purpose of obtaining negotiating, or discussing changes in specifications, price, cost allowances, or other terms of a contract; settling disputes concerning performance of a contract; or any other liaison activity with a view toward the ultimate consummation for a sale although the actual contract therefore is subsequently negotiated by another person; provided, however, that this subsection is not intended to preclude a former employee from accepting employment with private industry solely because the former employee's employer is a contractor with LBJ, nor shall a former employee be precluded from serving as a consultant to LBJ.

History: Rule 8, eff. March 3, 1999.

11.0662 Policy.

- A. Collusion or secret agreement between bidders or offerors for the purpose of securing an advantage to the bidders or offerors against the authorizing agent in the awarding of contracts is prohibited. The authorizing agent may declare the contract void if he finds sufficient evidence after a contract has been let that the contract was obtained by a bidder/offeror or bidder/offerors by reason of collusion or secret agreement

among the bidders/offerors to the disadvantage of the LBJ.

- B. Every person, before being awarded a LBJ contract, shall represent, in writing, that such person has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competition in connection with the bid or proposal submitted.
- C. The representation prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefore.

History: Rule 8, eff. March 3, 1999.

11.0663 Prohibition Against Employee Use And Contractor Acceptance Of Purchase Requisitions.

- A. Collusion or secret agreement between bidders or offerors for the purpose of securing an advantage to the bidders or offerors against the authorizing agent in the awarding of contracts is prohibited. The authorizing agent may declare the contract void if he finds sufficient evidence after a contract has been let that the contract was obtained by a bidder/offeror or bidder/offerors by reason of collusion or secret agreement among the bidders/offerors to the disadvantage of the LBJ.
- B. Every person, before being awarded a LBJ contract, shall represent, in writing, that such person has not directly or indirectly entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of competition in connection with the bid or proposal submitted.
- C. The representation prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefore.

History: Rule 8, eff. March 3, 1999.

11.0664 Civil Penalties.

- A. An employee who violates a provision of this chapter or the rules is subject to adverse action, including but not limited to reprimand, suspension without pay, or termination of employment, in addition to other penalties prescribed by law.

- B. A person other than an employee who violates a provision of this chapter or the rules shall be subject, by the LBJ Chief Procurement Officer with which that person is dealing directly at the time of the violation, to written warning of reprimand, termination of contract or transaction, or suspension from being a contractor or subcontractor under a LBJ contract in addition to the penalties prescribed by law.
- C. All proceeding under this section must be in accordance with due process requirements, including but not limited to reasonable notice and opportunity for hearing, and must be conducted in accordance with the hearing procedures prescribed by the Administrative Procedures Act, 4.1025 ASCA et seq., and this policy.

History: Rule 8, eff. March 3, 1999.

Appendix A – Termination for Convenience

- (a) The government may terminate performance of work under this contract in whole or, from time to time, in part if the contracting officer determines that a termination is in the government’s interest. The contracting officer shall terminate by delivering to the contractor a notice of termination specifying the extent of termination and the effective date.
- (b) After receipt of a notice of termination, and except as directed by the contracting officer, the contractor shall immediately proceed with the following obligations, regardless of any delay in determining or adjusting any amounts due under this clause:
 - (1) Stop work as specified in the notice;
 - (2) Place no further subcontracts or orders (referred to as subcontracts in this clause) for materials, services, or facilities, except as necessary to complete the continued portion of the contract;
 - (3) Terminate all subcontracts to the extent they relate to the work terminated;
 - (4) Assign to the government, as directed by the contracting officer, all right, title, and interest of the contractor under the subcontracts terminated, in which case the

government shall have the right to settle or to pay any termination settlement proposal arising out of those terminations;

- (5) With approval or ratification to the extent required by the contracting officer, settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts; the approval or ratification will be final for purposes of this clause;
- (6) As directed by the contracting officer, transfer title and deliver to the government (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the work terminated, and (ii) the completed or partially completed plans, drawings, information, and other property that, if the contract had been completed, would be required to be furnished to the government;
- (7) Complete performance of the work not terminated;
- (8) Take any action that may be necessary, or that the contracting officer may direct, for the protection and preservation of the property related to this contract that is in the possession of the contractor and in which the government has or may acquire an interest;
- (9) Use its best efforts to sell, as directed or authorized by the contracting officer, any property of the types referred to in subparagraph (6) of this subsection; provided, however, that the contractor (i) is not required to extend credit to any purchaser and (ii) may acquire the property under the conditions prescribed by, and at prices approved by, the contracting officer. The proceeds of any transfer or disposition will be applied to reduce any payments to be made by the government under this contract, credited to the price or cost of the work, or paid in any other manner directed by the contracting officer.
- (c) The contractor shall submit to the contracting officer a list, certified as to quantity and quality,

of termination inventory not previously disposed of, excluding items authorized for disposition by the contracting officer. The contractor may request the government to remove those items or enter into an agreement for their storage. Within 15 days, the government will accept title to those items and remove them or enter into a storage agreement. The contracting officer may verify the list upon removal of the items, or if stored, within 45 days from submission of the list, and shall correct the list, as necessary, before final settlement.

- (d) After termination, the contractor shall submit a final termination settlement proposal to the contracting officer in the form and with the certifications prescribed by the contracting officer. The contractor shall submit the proposal promptly, but no later than 1 year from the effective date of termination, unless extended in writing by the contracting officer upon written request of the contractor within this 1-year period. However, if the contracting officer determines that the facts justify it, a termination settlement proposal may be received and acted on after 1 year or any extension. If the contractor fails to submit the proposal within the time allowed, the contracting officer may determine, on the basis of information available, the amount, if any, due the contractor because of the termination and shall pay the amount determined.
- (e) Subject to paragraph (d) of this appendix, the contractor and the contracting officer may agree upon the whole or any part of the amount to be paid because of the termination. The amount may include a reasonable allowance for profit on work done. However, the agreed amount, whether under this paragraph (e) may not exceed the total contract price as reduced by
 - (1) the amount of payments previously made and
 - (2) the contract price of work not terminated.

History: Rule 5-84. eff 11 Jul 84, (part).

Appendix B1 – Termination for Default (Construction)

If the contractor refuses or fails to prosecute the work, or any separable part thereof, with such diligence as will insure its completion within the time specified in this contract, or any extension thereof, or fails to complete said work within such time, the government may, by written notice to the contractor, terminate his right to proceed with the work or such part of the work as to which there has been delay. In such event the government may take over the work and prosecute the same to completion, by contract or otherwise, and may take possession of and utilize in completing the work such materials, appliances, and plant as may be on the site of the work and necessary therefor. Whether or not the contractor's right to proceed with the work is terminated, he and his sureties shall be liable for any damage to the government resulting from his refusal or failure to complete the work within the specified time.

If the government so terminates the contractor's right to proceed, the resulting damage will consist of the fixed and agreed liquidated damages if stipulated elsewhere in this contract until such reasonable time as may be required for final completion of the work together with any increased costs occasioned the government in completing the work.

If the government does not so terminate the contractor's right to proceed, the resulting damage will consist of the fixed and agreed liquidated damages if stipulated elsewhere in this contract until the work is completed or accepted.

The contractor's right to proceed shall not be so terminated nor the contractor charged with resulting damage if:

- (1) The delay in the completion of the work arises from causes other than normal weather beyond the control and without the fault or negligence of the contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the government in either its sovereign or contractual capacity, acts of another contractor to the government in the performance of a contract with the government, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, unusually severe weather for American Samoa taking into consideration that

approximately 200 inches of rainfall annually is normal, or delays of subcontractors or suppliers arising from causes other than normal weather beyond the control and without the fault or negligence of both the contractor and such subcontractors or suppliers;

- (2) The contractor, within 10 days from the beginning of any such delay notifies the contracting officer in writing of the cause of delay.

The contracting officer shall ascertain the facts and the extent of the delay and extend the time for completing the work when, in his judgment, the findings of fact justify such an extension, and his findings of facts shall be final and conclusive on the parties, subject only to appeal.

If, after notice of termination of the contractor's right to proceed under the provisions of this section, it is determined for any reason that the contractor was not in default under the provisions of this section, the rights and obligations of the parties shall be the same as if a notice of termination for convenience had been issued.

The rights and remedies of the government provided in this section are in addition to any other rights and remedies provided by law or under this contract.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix B2 – Termination for Default (Goods and Services)

- (1) Default. If the contractor refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract, or any extension thereof, otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the procurement officer may notify the contractor in writing of the delay or nonperformance; and if not cured in ten days or any longer time specified in writing by the procurement officers, such officer may terminate the contractor's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part the procurement

officer may procure similar supplies or services in a manner and upon terms deemed appropriate by the procurement officer. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- (2) Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the government has an interest.
- (3) Compensation. Payment for completed supplies delivered and accepted shall be at the contract price. Payment for the protection and preservation of property shall be in an amount agreed upon by the contractor and procurement officer. The government may withhold from amounts due the contractor such sums as the procurement officer deems to be necessary to protect the government against loss because of outstanding liens or claims of former lien holders and to reimburse the government for the excess costs incurred in procuring similar goods and services.
- (4) Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, the contractor shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by the contractor to make progress in the prosecution of the work hereunder which endangers such performance) if the contractor has notified the procurement officer within 15 days after the cause of the delay and the failure arises out of causes such as, acts of God, acts of the public enemy, acts of the government and any other governmental entity in its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, the contractor shall not be

deemed to be in default, unless the supplies of services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit the contractor to meet the contract requirements.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by anyone or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the government under the clause entitled "Termination for Convenience".

- (5) Erroneous Termination for Default. If, after notice of termination of the contractor's right to proceed under the provisions of this clause, it is determined for any reason that the contractor was not in default under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience, be the same as if the notice of termination had been issued pursuant to such clause.
- (6) Additional Rights and Remedies. The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix C – Equal Opportunity

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60)).

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex,

or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this equal opportunity clause.

- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (f) In the event of the contractor's noncompliance with the Equal Opportunity clause of this

contract or with any of the said rules, regulations, orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967; and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- (g) The contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the government may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the government to enter into such litigation to protect the interests of the government.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix D – Anti-Kickback Statute

(The following clause is applicable unless this contract is exempt under the rules, regulations, and relevant orders of the Secretary of Labor (41 CFR, ch. 60)).

During the performance of this contract, the contractor agrees as follows:

- (a) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to

ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this equal opportunity clause.

- (b) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- (c) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this equal opportunity clause, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (d) The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (e) The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain

compliance with such rules, regulations, and orders.

- (f) In the event of the contractor's noncompliance with the Equal Opportunity clause of this contract or with any of the said rules, regulations, orders, this contract may be cancelled, terminated, or suspended, in whole or in part, and the contractor may be declared ineligible for further government contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No.11375 of October 13, 1967; and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No.11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (g) The contractor will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended by Executive Order No. 11375 of October 13,1967, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the government may direct as a means of enforcing such provisions, including sanctions for noncompliance; provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor may request the government to enter into such litigation to protect the interests of the government.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix E – Davis-Bacon Act

The following clause must be included in all construction contracts which are subject to the Davis-Bacon Act provisions:

- (A) Minimum wages.

- (i) All mechanics and laborers employed or working upon the site of the work, or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29CFR Part 3)), the full amounts due at time of payment computed at wage rates not less than those contained in the wage determination decision of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics, and the wage determination decision shall be posted by the contractor at the site of the work in a prominent place where it can be easily seen by the workers. For the purpose of this clause, contributions made or costs reasonably anticipated under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv). Also for the purpose of this clause, regular contributions made or costs incurred for more than a weekly period under plans, funds, or programs, but, covering the particular weekly period, are deemed to be constructively made or incurred during such weekly period.
- (B) The contracting officer shall require that any class of laborers or mechanics, including apprentices and trainees, which is not listed in the wage determination and which is to be employed under the contract, shall be classified or reclassified conformably to the wage determination and a report of the action taken shall be sent by the federal agency to the Secretary of Labor. In the event the interested parties cannot agree on the proper classification or reclassification of a particular class of laborers and mechanics, including apprentices and trainees, to be used, the question accompanied

by the recommendation of the contracting officer shall be referred to the Secretary for final determination.

(C) The contracting officer shall require, whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly wage rate and the contractor is obligated to pay a cash equivalent of such a fringe benefit, an hourly cash equivalent, thereof to be established. In the event the interested parties cannot agree upon a cash equivalent of the fringe benefit, the question, accompanied by the recommendation of the contracting officer, shall be referred to the Secretary of Labor for determination.

(D) If the contractor does not make payments to a trustee or other third person, he may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the wage determination decision of the Secretary of Labor which is a part of this contract:

Provided, however, the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(E) Withholding. The government may withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices and trainees, employed by the contractor or any subcontractor on the work the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice or trainee, employed or working on the site of the work or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project, all or part of the wages required by the contract, the government may, after written notice to the contractor, sponsor, applicant, or owner, take

such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(F) Payrolls and Basic Records.

(i) Payrolls and basic records relating thereto will be maintained during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work, or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project. Such records will contain the name and address of each such employee, his correct classification, rates of pay (including rates of contributions or costs anticipated of the types described in section 1(b)(2) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(G) The contractor will submit weekly a copy of all payrolls to the contracting officer if the agency is a party to the contract, but if the agency is not such a party the contractor will submit the payrolls to the applicant, sponsor, or owner, as the case may be, for transmission to the government. The copy shall be accompanied by a statement signed by the employer or his agent indicating that the payrolls are correct and complete, that the wage rates contained therein are not less than those determined by the

Secretary of Labor and that the classifications set forth for each laborer or mechanic conform with the work he performed. A submission of a “Weekly Statement of Compliance” which is required under this contract and the Copeland regulations of the Secretary of Labor (29 CFR, Part 3) and the filing with the initial payroll or any subsequent payroll of a copy of any findings by the Secretary of Labor under 29 CFR 5.5(a)(I)(iv) shall satisfy this requirement. The prime contractor shall be responsible for the submission of copies of payrolls of all subcontractors. The contractor will make the records required under the labor standards clauses of the contract available for inspection by authorized representatives of the government and the Department of Labor, and will permit such representatives to interview employees during working hours on the job. Contractors employing apprentices or trainees under approved programs shall include a notation on the first weekly certified payrolls submitted to the contracting agencies that their employment is pursuant to an approved program and shall identify the program.

(H) Apprentices and Trainees.

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a state apprenticeship agency recognized by the bureau, or if a person is employed in his first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen in any craft classification shall not be greater than the ratio permitted to the contractor as to his entire work force under the registered program. Any employee listed on a payroll

at an apprentice wage rate, who is not a trainee as defined in subdivision (ii) of this subparagraph or is not registered or otherwise employed as stated above, shall be paid the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish to the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the registration of his program and apprentices as well as the appropriate ratios and wage rates (expressed in percentages of the journeyman hourly rates), for the area of construction prior to using any apprentices on the contract work. The wage rate paid apprentices shall be not less than the appropriate percentage of journeyman’s rate contained in the applicable wage determination.

(I) Trainees. Except as provided in 29 CFR 5.5 trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification, by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training. The ratio of trainees to journeymen shall not be greater than permitted under the plan approved by the Bureau of Apprenticeship and Training. Every trainee must be paid at not less than the rate specified in the approved program for his level of progress. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Bureau of Apprenticeship and Training shall be paid not less than the wage rate determined by the Secretary of Labor for the classification of work he actually performed. The contractor or subcontractor will be required to furnish the contracting officer or a representative of the Wage-Hour Division of the U.S. Department of Labor written evidence of the certification of his program, the registration of the trainees, and the ratios and wage rates prescribed in that program. In the event the Bureau of Apprenticeship and

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Training withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (J) Equal Employment Opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- (K) Compliance with Copeland Regulations (29 CFR Part 3). The contractor shall comply with the Copeland Regulations (29 CFR Part 3) of the Secretary of Labor which are herein incorporated by reference.
- (L) Subcontracts. The contractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(I) through (5) and (7) and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.
- (M) Contract Termination. A breach of clauses (1) through (6) may be grounds for termination of the contract.

Additional provisions which must be included are:

- (1) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any laborer or mechanic in any work week in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, as the case may be.

- (2) Violations; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the clause set forth in subparagraph (1), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the clause set forth in subparagraph (1), in the sum of \$10 for each calendar day on which such employee was required or permitted to work in excess of 8 hours or in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in subparagraph (1).

- (N) Withholding for Unpaid Wages and Liquidated Damages. The government may withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2).

- (O) Subcontracts. The contractor shall insert in any subcontracts the clauses set forth in subparagraphs (1), (2), and (3) of this paragraph and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts which they may enter into, together with a clause requiring this insertion in any further subcontracts that may in turn be made.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix F – Contract Work Hours and Safety Standards At – Overtime Compensation

This contract, to the extent that it is of a character specified in the Contract Work Hours and Safety Standards Act (40 USC 327-333), is subject to the following provisions and to all other applicable

provisions and exceptions of such Act and the regulations of the Secretary of Labor thereunder.

(A) Overtime Requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers' mechanics, apprentices, trainees, watchmen, and guards shall require or permit any laborer, mechanic, apprentice, trainee, watchman, or guard in any work week in which he is employed on such work to work in excess of 8 hours in any calendar day or in excess of 40 hours in such work week on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer, mechanic, apprentice, trainee, watchman or guard receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such work week, whichever is the greater number of overtime hours.

(B) Violation; Liability for Unpaid Wages; Liquidated Damages. In the event of any violation of the provisions of paragraph (a), the contractor and any subcontractor responsible therefor shall be liable to any affected employee for his unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, apprentice, trainee, watchman, or guard employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of his standard work week of 40 hours without payment of the overtime wages required by paragraph (a).

(C) Withholding for Unpaid Wages and Liquidated Damages. The contracting officer may withhold from the government prime contractor, from any moneys payable on account of work performed by the contractor or subcontractor, such sums as may administratively be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and

liquidated damages as provided in the provisions of paragraph (b).

(D) Subcontracts. The contractor shall insert paragraph (a) through (d) of this clause in all subcontracts, and shall require their inclusion in all subcontracts of any tier.

(E) Records. The contractor shall maintain payroll records containing the information specified in 20 CFR 516.2(a). Such records shall be preserved for three years from the completion of the contract.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix G – Clean Air and Water

(A) "Air Act, " as used in this clause, means the Clean Air Act (42 USC 7401 et seq.).

(B) "Clean air standards," as used in this clause, means:

(1) Any enforceable rules, regulations, guidelines, standards, limitations, orders, controls, prohibitions, work practices, or other requirements contained in, issued under, or otherwise adopted under the Air Act or Executive Order 11738;

(2) An applicable implementation plan as described in section 110(d) of the Air Act (42 USC 7410(d));

(3) An approved implementation procedure or plan under section 111(c) or section 111(d) of the Air Act (42 USC 7411(c) or (d)); or

(4) An approved implementation procedure under section 112(d) of the Air Act (42 USC 7412(d)).

(C) "Clean water standards," as used in this clause, means any enforceable limitation, control, condition, prohibition, standard, or other requirement promulgated under the Water Act or contained in a permit issued to a discharger by the Environmental Protection Agency or by a state under an approved program, as authorized by section 402 of the Water Act (33 USC 1342), or by local government to ensure compliance with pretreatment regulations as required by section 307 of the Water Act (33 USC 1317).

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(D) “Compliance,” as used in this clause, means compliance with:

- (1) Clean air or water standards; or
- (2) A schedule or plan ordered or approved by a court of competent jurisdiction, the Environmental Protection Agency, or an air or water pollution control agency under the requirements of the Air Act or Water Act and related regulations.

(E) “Facility,” as used in this clause, means any building, plant, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a contractor or subcontractor, used in the performance of a contract or subcontract. When a location or site of operations includes more than one building, plant, installation, or structure, the entire location or site shall be deemed a facility except when the administrator, or a designee, of the Environmental Protection Agency, determines that independent facilities are collocated in one geographical area.

(F) “Water Act,” as used in this clause, means Clean Water Act (33 USC 1251) et seq.).

(G) The contractor agrees:

- (1) To comply with all the requirements of section 114 of the Clean Air Act (42 USC 7414) and section 308 of the Clean Water Act (33 USC 1318) relating to inspection, monitoring, entry, reports, and information, as well as other requirements specified in section 114 and section 308 of the Air Act and the Water Act, and all regulations and guidelines issued to implement those acts before the award of this contract;
- (2) That no portion of the work required by this prime contract will be performed in a facility listed on the Environmental Protection Agency List of Violating Facilities on the date when this contract was awarded unless and until the EP A eliminates the name of the facility from the listing;
- (3) To use best efforts to comply with clean air standards and clean water standards at the

facility in which the contract is being performed; and

- (4) To insert the substance of this clause into any nonexempt subcontract, including this subparagraph (b)(4).

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix I – Examination of Records

The contractor agrees that the contracting officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor involving transactions related to this contract.

The contractor further agrees to include in all his subcontracts hereunder a provision to the effect that the subcontractor agrees that the contracting officer, the Comptroller General of the United States, or the Secretary of the Interior, or any of their duly authorized agents or representatives, shall, until the expiration of three years after final payment under the subcontract, have access to and the right to examine any directly pertinent book, documents, papers and records of such subcontractor, involving transactions related to this contract.

History: Rule 5-84, eff 11 Jul 84, (part).

Appendix J – Patents

The contractor shall hold and save the government and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of, any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract, including its use by the government, unless otherwise specifically stipulated in the contract documents.

License and/or royalty fees for the use of a process which is authorized by the government on the project must be reasonable, and paid to holder of the patent or his authorized licensee, directly by the government and not by or through the contractor.

If the contractor uses any design, device, or materials covered by letters of patent or copyright, he shall

provide for such use by suitable agreement with the owner of such patented or copyright design, device, or material. It is mutually agreed and understood, that, without exception, the contract prices shall include all royalties or costs arising from the use of such design, device, or materials, in any way involved in the work. The contractor and/or his sureties shall indemnify and save harmless the government from any and all claims for infringement, by reason of the use of such patented or copyrighted design, device, or materials or any trademark or copyright in connection with work agreed to be performed under this contract, and shall indemnify the government for any cost, expense or damage which it may be obligated to pay by reason of such infringement at any time during the work or after completion of the work.

History: Rule 5-84, eff 11 Jul 84, (part).

END OF TITLE 11 – HEALTH AND ECONOMIC
WELFARE SERVICES