



AMERICAN SAMOA GOVERNMENT

AMERICAN SAMOA ADMINISTRATIVE CODE 2023 EDITION

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FOREWORD

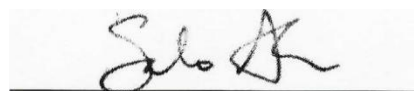
The American Samoa Administrative Code (Administrative Code) is the official reporter of the rules, regulations, and procedures adopted pursuant to the rulemaking process in the Administrative Procedures Act.¹ Often referred to as the “administrative rules”, this body of law specified rules and requirements adopted by agencies to execute and enforce the general laws passed by the Fono and enacted by the Governor. The proper maintenance and availability of these administrative rules are critical to an efficient government and the well-being of our community and the Secretary of American Samoa is required by law to compile, index, and publish all effective rules adopted by each agency and to do so every two years to reflect amendments they have adopted or changes in statutory law.²

Unfortunately, the last official version of the Administrative Code was published in 1982, now over 40 years ago. Realizing this deficiency upon taking office in 2021, Honorable Governor Lemanu Mauga, took immediate action, directing the Office of the Secretary to proceed with all expediency to publish an updated, official version of the Administrative Code so the People and the government agencies have access to the same set of administrative rules.

While it took some time, I am pleased to finally present the official version of the *American Samoa Administrative Code – 2023 Edition*. Our team at the Secretary’s Office and the Comprehensive Administrative Rule Reform (CARR) project worked diligently over two years pouring over public and private records and conducting interviews of key individuals to piece together the current version of agency rules. In January 2022, we circulated our first attempt at updating the Administrative Code and requested input from our community. Through the CARR Project, we received great input and support from government agencies, the Fono, Court, the American Samoa Bar Association, and other members of the community.

The 2023 Edition of the Administrative Code reflects the hard work and commitment of many individuals including the staff at the Secretary’s Office, the CARR Project, the Governor’s Office, the Rule Reform Officers, as well as the great contributions of our government leaders and members of the community. It is my hope that this work will help our people better understand the rules that apply in their dealings with government agencies. It is also my hope that our government agencies will benefit from having updated, concise, and accurate rules at their fingertips to facilitate their services to the people of American Samoa.

Our work is not done. We have an obligation to update the Administrative Code every two years, which means our work must start now. And we cannot forget the American Samoa Code Annotated, the official reporter of laws and statutes passed by the Fono and approved by the Governor, was last published in 1992. Likewise, the American Samoa Reporter, the official reporter of American Samoa Court cases, was last published in 2006. We have an obligation to update these reporters as well.



Talauega Eleasalo V. Ale
Secretary of American Samoa

¹ A.S.C.A. §§ 1.0201(3), 4.1001 – 4.1010

² A.S.C.A. § 4.1003

Editorial Note:

As is typical of an undertaking of this magnitude, every effort was expended to make it as accurate as possible but it is by no means perfect nor at this point in time, ‘complete.’ Suggestions for improvements and/or corrections hereto are solicited in earnest as this is still, and always will be, a “living document” in every sense.

We are immensely grateful for the support shown for the CARR project.

Please send or advise of any corrections that need to be made or suggestions for improvements via email to secretaryofamericansamoa@go.as.gov. Please attach any supporting documentation or point us in the right direction so we can recover said documents.

The CARR Team
Secretary of American Samoa
May 2023

AMERICAN SAMOA ADMINISTRATIVE CODE - 2023 Edition

Revisions, Amendments, and Updates

Rule #	Status	Agency	Subject Matter	Affected Title(s)	Effective Date:	Sunset (if applicable)
06-98	Recovered Rule	LBJTMC	Revisions to Chapter 4 of ASAC Title 11	11.00424 - 11.0469	3/3/1999	n/a
07-98	Recovered Rule	LBJTMC	Revisions to Chapter 5 of ASAC Title 11	11.0501 - 11.0521	2/9/1999	n/a
8	Recovered Rule	LBJTMC	Revisions to Chapter 6 of ASAC Title 11	11.0601 - 11.0664	3/3/1999	n/a
01-2000	Recovered Rule	LBJTMC	Further verification required; currently under review	n/a	n/a	n/a
05-2000	Recovered Rule	LBJTMC	Revisions to 11.0427(a) and (c)	11.0427	9/1/2000	n/a
2003	Recovered Rule	DLA-Immigration	Amended 41.0319, 41.0409, 41.1007, 41.1008, 41.1009	41.0319; 41.0409; 41.1007; 41.1008; 41.1009	4/1/2003	n/a
2005	Recovered Rule	LBJTMC	Title 11, Chapter 4	11.0423; 11.0426; 11.0443; 11.0452; 11.0454; 11.0455;	1/5/2006	n/a
2010	Recovered Rule	DLA-Immigration	Title 41, Chapters 3, 4, & 10	41.0303; 41.0304; 41.0305; 41.0328; 41.0330; 41.0331; 41.0406; 41.1002; 41.1003; 41.1004; 41.1005; 41.1006; 41.1007; 41.1008; 41.1009; 41.1010	5/10/2010	n/a
2018-0050	Recovered	DLA-TR	DLA - Territorial Registrar - Amend filing fees at TR's office	2.0202	2/11/2019	n/a
2022-0001	Emergency Rule	Procurement	Increase the threshold for small purchases	10.0214; 10.0231	4/13/2022	08/11/2022
2022-0002	Emergency Rule	Procurement	Increase the threshold for small purchases	10.0214; 10.0231	8/17/2022	12/15/2022
2022-0003	Permanent Rule	Procurement	Increase the threshold for small purchases	10.0214; 10.0231	12/29/2022	n/a
2022-0004	Permanent Rule	Office of Financial Institutions	Create capital adequacy requirements for depository institutions doing business in AS not insured by FDIC	28.0101	1/6/2023	n/a
2023-0005	Permanent Rule	DLA - Immigration	Revise requirements for Entry Permits	41.1007(a), (a)(1) to (a)(4), (c)(7), and (d)	4/10/2023	n/a

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TITLE 2 – CHAPTER 01 – SHORTFALL RECTIFICATION PROGRAM

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- 2.0108 Collection of Accounts Receivable and Taxes.
- 2.0109 Electric Power Rates and Charges.
- 2.0110 Implementation.

2.0101 Findings.

- (a) The American Samoa government is recovering slowly and surely but not to the extent that we can forego entirely the administrative and financial controls which we have instituted earlier this year. As a matter of policy, the Executive Branch will continue to exercise frugality in the management of its affairs until the government financial situation and the local economy have stabilized and long-term solutions to our financial management system have been implemented.
- (b) Accordingly, by the authority vested in the Governor of American Samoa by the revised constitution and laws of American Samoa, it is ordered that the provisions set out in this chapter shall be followed.

History: Rule 20-83, eff 26 Dec. 83. (part).

2.0102 Government Work Week.

The government will operate the normal 5-day work week with all employees working 40 hours regular time.

History: Rule 20-83, eff 26 Dec. 83, § 1.

2.0103 Reorganizations.

Proposed reorganizations will be deferred pending review of the management report of the Department of the Interior, unless there are extraordinary circumstances requiring earlier action. In all cases, reorganization requests will be carefully and jointly screened by the Director of Program Planning and Budget Development and Director of Manpower Resources before the requests are presented with their recommendations to the Governor for approval.

History: Rule 20-83, eff 26 Dec. 83. § 2.

2.0104 Step Increments.

- (a) Employees who were otherwise entitled to salary step increments in fiscal year 1983 but for Executive Order No. 2-1983 and Executive Order No. 61983 will receive them effective October 9, 1983. There will be no retroactive payments. In addition, those employees will receive their entitlement to salary step increments in fiscal year 1984 as of their regular anniversary dates.
- (b) Employees who received salary step increments in fiscal year 1983 will receive their entitlement to another salary step increment in Fiscal year 1984 as of June 30, 1984. This date will also become their regular anniversary date.

History: Rule 20-33, eff 26 Dec. 83, § 3.

2.0105 Reclassifications and Promotions.

Reclassifications and promotions will be processed according to normal personnel procedures. Approval will be based on the merits of each case and be contingent upon the availability of funding. There will be no retroactive payments.

History: Rule 20-83, eff. 26 Dec 83. § 4.

2.0106 Hiring.

Hiring will be processed according to normal personnel procedures. The establishment of any new position and the filling of any vacant budgeted position requires a separate, written justification accompanying the position action request, form 48 and certification request, form 35; and must be sent to the Director of Program Planning and Budget Development for approval before referral to the Director of Manpower Resources.

History: Rule 20-83, eff 26 Dec 83. § 5.

2.0107 Other Cost Containment Measures.

Other cost containment measures are:

- (1) department, office and other agency heads maintaining inventories are directed to reduce inventories to and maintain them at realistic levels as jointly determined by the respective agency head, Director of Program Planning and Budget Development, and Director of Administrative Services;
- (2) department, office and other agency heads are directed to identify and sell or otherwise legally dispose of surplus or excess property;
- (3) travel is restricted to essential purposes, and must be approved by the Director of Program Planning and Budget Development and Director of Administrative Services, subject to final appeal to the Governor or his designee;
- (4) department, office and other agency heads are directed to postpone the purchase of nonessential equipment and supplies until the third quarter of fiscal year 1984 unless sooner authorized by the Governor;
- (5) The CIP and procurement review committee is directed to evaluate all current capital improvement projects and, no later than November 30, 1983 and at such other times as the Governor may direct, report and recommend to the Governor for final decision on projects to be continued, activated, cancelled, or reprogrammed.

History: Rule 20-83, eff 26 Dec. 83, § 6.

2.0108 Collection of Accounts Receivable and Taxes.

- (a) The Director of Administrative Services and the heads of all other revenue generating agencies are directed to increase efforts including appropriate legal remedies with the attorney general's assistance, to collect outstanding accounts receivable for goods and services provided by the government.
- (b) The Tax Manager is directed to increase efforts through audits and other means, including appropriate legal remedies with the Attorney General's assistance, to collect income and related taxes now and hereafter due.

- (c) The Director of Port Administration is directed to collect excise taxes on the importation of petroleum products within 30 days after the offloading of each shipment into onshore storage facilities.

History: Rule 20-83, eff 26 Dec 83. § 7.

2.0109 Electric Power Rates and Charges.

Electric power rates and charges must be structured and from time to time restructured so that total revenues generated are sufficient to cover operating expenses. The rates must encourage conservation rather than consumption of electric power. The executive director of the American Samoa Power Authority and the chairman of the board of directors of the Authority are directed to implement this order.

History: Rule 20-83, eff 26 Dec 83, § 8.

2.0110 Implementation.

The director of administrative services will report weekly to the Governor on cash collections and disbursements, as well as other useful financial data. The director of program planning and budget development will report monthly to the Governor on expenditures and revenue collections compared to the approved budget and proposed programs, as well as other fiscal policy matters. The director of development planning will report monthly to the Governor on the state of the local economy and how it may affect public finances.

History: Rule 20-83, eff 26 Dec 83, § 9.

TITLE 2 – CHAPTER 02 – TERRITORIAL REGISTRAR FEES

Sections:

- 2.0201 Authority and Purpose.
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2.0201 Authority and Purpose

This rule is issued pursuant to authority granted the territorial registrar in 4.1101 And 4.1002 A.S.C.A., to establish fees to be charged for all instruments to be registered.

History: Rule 8-87, eff 22 Apr 87.

2.0202 Fees

(a) Fees shall be submitted with all instruments prescribed in this chapter and shall be the amount prescribed by law or rule. Every filing shall be accepted subject to collection of the fee. A charge of \$35.00 will be imposed if a check in payment of the fee is not honored by the bank on which it is drawn. A receipt issued by the office of the Territorial Registrar for any such fee shall not be binding if a fee is found uncollectable. Remittances of fees must be in the form of United States currency, cashier’s check or personal check only. Remittances of fees must be drawn on a bank or other institution located in American Samoa and be payable in United States currency. Fees in the form of postage stamps or money order shall not be accepted.

Remittances shall be made payable in the exact amount or the fee(s) and payable to the “Treasurer-American Samoa Government.”

- (b) The following fees and charges are prescribed:
- (1) The fee for land registration, and/or letter of objection to any land registration shall be \$50.00;
 - (2) The fee for registering a Matai Title and/or letter of objection to any Matai Title Registration shall be \$200.00;
 - (3) The fee for registering a Deed shall be \$50.00;
 - (4) The fee charged for registering a Land Lease, House Lease, and/or any written objection to these filings shall be \$50.00
 - (5) The fee for Separation Agreements and/or an objection to any separation agreement shall be \$25.00;
 - (6) The fee for filing and recordation of any Mortgage, Lien, Bank Note, Satisfaction, or Release and other documents of this nature shall be \$25.00;
 - (7) The fee for performing research into the records shall be \$15 per request;
 - (8) The fee for executing Registrar Affidavits shall be \$25.00 per affidavit;

- (9) The fee for registering a Trademark is set by A.S.C.A. Title 27.0302, and as subsequently amended, currently requiring a \$10.00 fee;
- (10) The fee for all miscellaneous items shall be \$15.00;
- (11) The fee for Certified Copy of a Document shall be \$5.00;
- (12) The fee for a copy of any document from the Registrar’s Office shall be \$1.00 for each page of the first 5 pages, then the fee shall be increased to \$1.50 per page for every page thereafter.

History: Rule 8-87, eff. 22 Apr 87.

TITLE 2 – CHAPTER 03 – GOVERNMENT RECORDS MANAGEMENT

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 - 2.0302 Definitions.
- II. AGENCY RECORD PROGRAMS*
 - 2.0303 Agency Responsibilities
 - 2.0304 Vital Records.
 - 2.0305 Disposition of Records.
 - 2.0306 Inspection by The Archivist.
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 - 2.0307 Authority of Archivist.
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- IV. **MICROGRAPHICS**
 - 2.0321 Authority.
 - 2.0322 Agency Use of Micrographics.
 - 2.0323 Micrographic Quality.
 - 2.0324 Disposal of Microfilmed Records.
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I. **GENERAL**

2.0301 Authority.

The rules contained in this chapter are issued pursuant to 4.1205 A.S.C.A., and in conformity with Chapter 4.10 A.S.C.A. These rules establish certain records management procedures) intended to improve the economy and efficiency of records maintenance and disposition, which are to be used by all agencies of the government.

History: Rule 14-87, eff 4 Aug. 87.

2.0302 Definitions.

As used in this chapter, the terms “agency,” “records” and “archivist” shall have the meanings ascribed to them by 4.1201 A.S.C.A.

History: Rule 14-87, eff 4 Aug. 87.

II. **AGENCY RECORDS PROGRAMS**

2.0303 Agency Responsibilities.

Section 4.1206 A.S.C.A., establishes certain agency responsibilities for records. Under these responsibilities, the head of each agency is to:

- (1) submit to the archivist for administration, disposition, and preservation the records in agency custody not needed for the transaction of current business, in accordance with standards and policies adopted by the archivist;
- (2) establish and maintain programs; in accordance with standards and procedures established by the archivist, for the economical and efficient management, maintenance, and disposition of agency records;
- (3) make and maintain records containing inadequate and proper documentation of the objectives, functions, policies, decisions, procedures, and essential transactions of the agency.

History: Rule 14-87, eff 4 Aug. 87.

2.0304 Vital Records.

Each agency shall take appropriate measures to identify and protect those records essential for the continuity of government operations and the protection of the rights and interests of individuals in the event of an emergency or disaster. Effective measures to meet these ends include the microfilming of appropriate records and the use of secure filing equipment and facilities.

History: Rule 14-87, eff 4 Aug. 87.

2.0305 Disposition of Records.

Each agency shall make provision to ensure that records of continuing value are preserved but that records no longer of current value to the agency are promptly disposed of or retired. Effective techniques for accomplishing these ends are the development of records schedules, the transfer of records to the government records center or archives, the microfilming of appropriate records, and the destruction of valueless records.

History: Rule 14-87, eff 4 Aug. 87.

2.0306 Inspection by The Archivist.

Agency programs for the creation, maintenance and use of current records: for the protection of vital records; for the selective retention of records of continuing value; and for the disposal of noncurrent records will be inspected periodically by the archivist to determine agency compliance with 4.1206 A.S.C.A., and with rules set forth in this chapter, to evaluate the effectiveness of agency records management programs and practices, and to provide records management assistance and advice. Copies of inspection reports will be provided to the agency head, the Governor, and the Legislature.

History: Rule 14-87, eff 4 Aug. 87.

III. **PROCEDURES FOR THE DISPOSITION OF RECORDS**

2.0307 Authority of Archivist.

Under 4.1205 (1)(c), the archivist is to establish standards, regulations, and procedures for the disposal of records which do not, or will not after a lapse of time possess sufficient administrative, legal, fiscal, historical, or other research value to warrant their further retention. Under 4.1205(2) and (3), the archivist is to identify and select the archives of the

government and to establish, maintain, and operate a government records center for storing and servicing agency records pending further disposition.

History: Rule 14-87, eff 4 Aug. 87.

2.0308 Agency Records Schedules.

Each agency is to maintain and apply an agency records schedule, approved by the archivist and on a form prepared by the archivist, for all records of the agency. Such schedules shall include a comprehensive list of the types or series of records of the agency and shall specify the proper disposition of each type or series by providing instructions for:

- (1) the retention of all records of continuing value;
- (2) the destruction or other disposal of records of no further value;
- (3) the removal to the government records center of agency records which are not suitable for either immediate destruction or transfer to the archives but are no longer actively needed in agency space;
- (4) the transfer of custody to the government archives of those records of permanent value which are no longer actively needed in agency space. Records of permanent value are those which have been determined by the archivist, on the basis of current archival standards, to have sufficient value to warrant preservation in the government archives;

History: Rule 14-87, eff 4 Aug. 87.

2.0309 Approval of Agency Records Schedules.

Agency records schedules shall be approved in the following manner:

- (a) A draft schedule shall be prepared by the agency and archivist, indicating the record types or series made or received by the agency and proposed disposition instructions for each type. Disposition instructions shall be based on analysis of the administrative, legal, fiscal, audit, historical, and other values of each record type. Such analysis shall be consistent with current standards of records management and archival practice.

- (b) The archivist shall forward the draft schedule to the attorney general, treasurer, and territorial auditor for their review and comments based, respectively, on the legal, fiscal, and audit values of the record types included on it. Any comments shall be returned to the archivist within 20 days.

- (c) The archivist, after review of comments received under subsection (b) and archivist and may be either a notice of one-time records destruction or a plan for appropriate modifications of the draft schedule, shall prepare and approve an agency records schedule which shall be submitted to the head of the agency for approval. The approval of each shall represent their certification that the records recommended for disposal will not have sufficient administrative, legal, fiscal, audit historical, or other value to warrant retention beyond the expiration of their specified periods. Upon approval by the archivist and the head of the agency the schedule shall be considered an approved agency records schedule.

History: Rule 14-87, eff 4 Aug. 87.

2.0310 Revision of Agency Records Schedules.

Agencies and the archivist shall review agency records schedules periodically to ensure that they are kept up-to-date and accurate. Record types may be added to or deleted from an agency records schedule or disposition instructions altered on an agency records schedule by following the procedures indicated in 2.0309, specifying the additions, deletions, or alterations which are being considered.

History: Rule 14-87, eff 4 Aug. 87.

2.0311 General Records Schedules.

The archivist may prepare and approve general records schedules governing the disposition of record types which are common to several or all agencies. Such schedules shall be based upon analysis of the administrative, legal, fiscal, audit) historical, and other values of each record type, consistent with current standards of records management and archival practice. Before approval of a general records schedule, the archivist shall forward copies of the proposed schedule to the attorney general, treasurer, and, territorial auditor for their review and comments based) respectively, on the legal, fiscal, and audit values of the record types included on it.

Any comments shall be returned to the archivist within 20 days. The archivist, after review of comments received and any appropriate modifications, shall prepare and approve a general records schedule, certifying that the records recommended for disposal will not have sufficient administrative, legal, fiscal, audit, historical, or other value to warrant retention beyond the expiration of their specified periods. Copies of general records schedules shall be made available to agencies.

History: Rule 14-87, eff 4 Aug. 87.

2.0312 Revision of General Records Schedules.

The archivist may add record types to or delete record types from a general records schedule or alter the disposition instructions on a general records schedule by following the procedures indicated in 2.0311, specifying the additions, deletions, or alterations which are being considered.

History: Rule 14-87, eff 4 Aug. 87.

2.0313 Mandatory Use of Records Schedules.

The use of agency records schedules and general records schedules is mandatory. Records scheduled for destruction or transfer to the archives shall not be maintained longer by an agency without approval of the archivist, nor shall records be destroyed prior to the expiration of their specified retention periods. In case of conflict between the disposition instructions on an agency records schedule and a general records schedule, the instructions on the agency records schedule shall apply to that agency.

History: Rule 14-87, eff 4 Aug. 87.

2.0314 Records Destruction.

An agency intending to destroy, sell as scrap, purge, or otherwise discard any temporary records shall forward to the archivist a notification of the proposed action at least 15 days in advance of the intended action. Such a notification shall be on a form prepared by the archivist and may be either a notice of one-time records destruction or a plan for continuing record destruction over a period of time. In both cases, such notification shall indicate the records to be destroyed, their quantity or other appropriate measure, their inclusive dates, and reference to the records schedule governing their disposition. No records may be destroyed unless they have been properly scheduled

and notification of their intended disposition has been sent to the archivist in accordance with this rule. The archivist shall prohibit any records destruction which is not in conformity with these rules and approved schedules.

History: Rule 14-87, eff 4 Aug. 87.

2.0315 Transfer of Records to The Records Center.

Records may be transferred by an agency to the government records center operated by the archivist provided that:

- (a) the records are properly scheduled;
- (b) the records are not eligible for immediate destruction but are no longer actively needed in agency space; and
- (c) facilities for storing and servicing the records are available. Records being transferred should be in such condition that they are suitable for servicing by the records center. Agency records stored at the records center shall be considered to be maintained by the agency which deposited the records and all use of such records shall be consistent with agency policies or procedures. An agency may withdraw any or all of its records from the records center upon notice to the archivist.

History: Rule 14-87, eff 4 Aug. 87.

2.0316 Destruction of Records Stored at The Records Center.

Records stored at the records center which become eligible for destruction shall be destroyed by the archivist in accordance with approved records schedules. The archivist shall notify the depositing agency of the intention to destroy the records at least 30 days prior to their intended destruction. Upon request of the agency, stating justification for continued retention of the records, and with the approval of the archivist, these records may be held for an additional period of time. Ordinarily, agency requests for the records center to retain records for more than 1 year after the expiration of their scheduled retention periods should be accompanied by a request to the archivist to revise the disposition instructions on that schedule governing the records.

History: Rule 14-87, eff 4 Aug. 87.

2.0317 Transfer of Records to The Archives.

An agency, in accordance with disposition instructions on an approved records schedule and with the approval of the archivist, shall transfer to the government archives operated by the archivist those records of permanent value which are no longer actively needed in agency space or which have been stored in the records center pending scheduled transfer to the archives. Upon transfer, the archivist shall become responsible for the physical and legal custody, use, and withdrawal of the records.

Provision for any agency needs which may affect the archivist's management of the records shall be agreed to by the archivist and the head of the agency in advance of the transfer of records.

History: Rule 14-87, eff 4 Aug. 87.

2.0318 Temporary Extension of Custody.

An agency which wishes to:

- (1) retain custody of temporary records beyond the time when they are scheduled for destruction; or
- (2) retain custody of permanent records beyond the time when they are scheduled for transfer to the archives: shall request authorization from the archivist, indicating the justification for continued custody and the estimated duration of the continued custody. These requests will be granted based upon adequate justification, however agency requests to retain custody of records for more than 1 year after scheduled destruction or transfer should ordinarily be accompanied by a request to the archivist to revise the disposition instructions on that schedule governing the records.

History: Rule 14-87, eff 4 Aug. 87.

2.0319 Alienation of Records.

All records of agencies are the property of the government. No agency may transfer physical or legal custody of its records except to a successor agency, to an agency having administrative or other official need of the records, under provisions of any applicable laws or administrative rules, or with approval of the archivist. All records which are transferred under these provisions remain subject to applicable records schedules.

History: Rule 14-87, eff 4 Aug. 87.

2.0320 Exceptions to Rules-Emergencies.

Authorization for disposition actions which, due to exceptional circumstances or emergencies, will not be in conformity with these rules may be requested of the archivist by the head of an agency. Such requests should provide justification for the proposed actions. The archivist shall consider these requests and make determinations of appropriate actions based upon the stated justification and the circumstances.

History: Rule 14-87, eff 4 Aug. 87.

IV. MICROGRAPHICS

2.0321 Authority.

Under 4.1205(I)(E), the archivist is authorized to establish standards, regulations, and procedures for the reproduction and maintenance of records by micrographic, photographic, magnetic, or other process. Reproductions made in compliance with these standards have the same force and effect as the originals would have and are treated as originals for audit, admissibility as evidence, and other similar purposes.

History: Rule 14-87, eff 4 Aug. 87.

2.0322 Agency use of Micrographics.

Agencies may utilize micrographics for the reproduction of records, provided that such use is determined by the agency to be economical and efficient for the care, maintenance, retrieval, security, and preservation of the records. Before microfilming, agencies should especially consider the retention value of the original records, their importance to the agency, and the quality and durability of the microfilm which will be produced.

History: Rule 14-87, eff 4 Aug. 87.

2.0323 Micrographic Quality.

Micrographic processes and the storage and use of resulting microfilm should comply, insofar as is possible, with current minimum standards approved by the American National Standards Institute and the Association for Information and Image Management. Such compliance is especially important when microfilm is to be substituted for original records of long-term or permanent value.

History: Rule 14-87, eff 4 Aug. 87.

2.0324 Disposal of Microfilmed Records.

Original records which have been microfilmed may be destroyed, unless otherwise prohibited by law or regulation, by complying with 2.0314 of this chapter, indicating that the microfilm is being substituted for the original records for the remainder of the assigned retention period. Approval for destruction will be given by the archivist based upon satisfactory demonstration that the microfilm accurately and completely reproduces the original records and will be of acceptable quality for the duration of the assigned retention period. The archivist may require the retention of original records of permanent value which are deemed to have sufficient intrinsic value, in their original form, to require preservation in that form.

History: Rule 14-87, eff 4 Aug. 87.

END OF TITLE 2 - EXECUTIVE

TITLE 3 – ELECTION CONTRIBUTIONS AND EXPENSES

Chapters

01	Campaign Spending Commission
02	Registration
03	Candidates
04	Election Officials
05	Conduct of Elections
06	Reserved
07	Voting Procedures
08-10	Reserved
11	Absentee Voting
12	Administrative Complaint Procedure

Editor's Note: 7 Dec 2021.

Copies of the American Samoa Administrative Code available to the Office of the Secretary of American Samoa, as indicated above, lists twelve (12) total chapters four of which are reserved. Actual chapters found within the text are Chapters 1, 2, 3, and 11 only. No other records found to date include all of the abovementioned chapters in its entirety. Efforts are ongoing to procure a complete copy of Title 3 that contains all of the abovementioned chapters.

TITLE 3 – CHAPTER 01 – CAMPAIGN SPENDING COMMISSION

Sections:

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3.0102	Construction of Rules.
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I. GENERAL PROVISIONS

3.0101 Scope.

The rules set out in this chapter govern procedure before the campaign spending commission and were adopted by the commission under 6.1703(b) 5 A.S.C.A., to carry out the provisions of 6.1701 A.S.C.A., et seq., relating to election campaign contributions and expenditures as now or hereafter amended, and to provide for the efficient administration thereof. They are designed to provide a clear understanding of the standards which the commission will apply.

History: Rule 1-85, eff 2 May 85, § 1.1.

3.0102 Construction of Rules.

- (a) The rules shall be liberally construed to promote meaningful disclosure of the financial aspects of the campaign process, including the source of contributions and the manner of expenditures, in order to promote public participation and confidence in the electoral process.
- (b) Rule 1 sets forth general provisions applicable to the campaign spending commission and should be read in conjunction with special rules governing the particular proceeding described in the caption of the special rule. In any conflict between a provision in Rule 1 and a special rule, the special rule shall govern.

History: Rule 1-85, eff 2 May 85, § 1.2.

3.0103 Definitions.

As used in these rules and in proceedings brought under these rules, unless the context clearly requires otherwise:

- (a) The terms “advertisement”, “campaign treasurer”, “candidate”, “commission”, “committee”, “contribution”, “election”, “expenditure”, “house bulletin”, “newspaper”, “office”, and “person” shall have the same meaning as set forth 6.1701 A.S.C.A., for each term.
- (b) “Campaign employee” means any person who, with or withhold compensation, at the request of

the candidate or his representative performs services related to the candidate’s campaign.

- (c) “Commissioner” means a member of the campaign spending commission.
- (d) “Communications media” means radio and television broadcasting stations intended for direct reception by the general public, including a community antenna television system, newspapers, magazines, outdoor advertising facilities of a type customarily leased to commercial advertisers, and the cost of telephones, paid telephonists, and automatic telephone equipment used to communicate with potential voters.
- (e) “Complainant” means a person who alleges in writing under oath that a violation of the law administered by the commission has occurred. He shall not be a party of record.
- (f) “Defective or deficient report” means a report which is illegible, improperly filed, or a report containing omissions or mistakes which have not been corrected.
- (g) “Financial depository”, “campaign depository”, “registered depository” and similar terms mean any corporation lawfully carrying on business in the territory as a bank, trust, investment company, savings and loan association, or similar institution organized to receive and accumulate funds and reported in accordance with 6.1706 A.S.C.A.
- (h) “Last preceding general election” means the last preceding general election, whether or not the particular office sought by the candidate appeared on the ballot and -taking into consideration any intervening reapportionment.
- (i) “Presiding officer” means the chairman of the commission or other person presiding at any commission meeting or hearing as determined by the commission.
- (j) “Printing” includes any process used to produce campaign materials such as photo offset, multilith, computerized letters and mailing lists, magnetic card typewriters, photocopies, etc.

- (k) “Required report” means any report filed with the commission in accordance with commission Rule 4, 5 and 7.
- (l) “Respondent” means the person allegedly violating the law administered by the commission or any rule adopted by it.
- (m) “Staff investigative attorney” means the attorney general or his attorney designee who shall investigate complaints for the commission and to present evidence in support of a complaint in a contested case.
- (n) “Violation in reporting” means failure to file a required report or to comply with a commission request to complete or correct a deficient report.

Other terms are defined as required in special rules governing particular proceedings and shall have that meaning whenever used or referred to in rules adopted by the commission. Words in the masculine gender signify both masculine and feminine. Those in the singular or plural number signify both the singular and plural.

History: Rule 1-85, eff 2 May 85, § 1.3.

3.0104 The Commission.

- (a) Office. The offices of the commission are in the Office of the Chief Election Officer, or other address at which the commission may be located from time to time. Unless otherwise specifically directed, all communication to the commission may be sent by mail to the Campaign Spending Commission, Pago Pago, American Samoa, 96799, or may be hand carried to the offices of the commission.
- (b) Hours. The offices of the commission are open from 8:00 a.m. to 4:30 p.m. of each weekday, unless otherwise provided by statute or executive order.
- (c) Meetings. The commission meets and exercises its powers in any part of the territory of American Samoa. Meetings may be called by the chairman or 3 or more members upon notice of the other members of the commission. All of its meetings and hearings, except probable cause hearings under 6.1722 A.S.C.A., are open to the public.

- (d) Quorum. Three commissioners constitute a quorum for the purpose of conducting the commission’s business. When a quorum is in attendance, action may be taken by the commission upon a vote of the majority of all commissioners.
- (e) Action by Commissioners. The commission in the discharge of any of its duties, or the exercise of any of its powers, may act through one or more of its members, agents, or employees designated by the commission for that purpose.
- (f) Manner of Voting. An accurate record of votes and actions taken at any commission meeting shall be set forth in the minutes. Final action on adoption of rules, advisory opinions, disposition of complaints, and commission investigations shall be by roll call.
- (g) Chief Election Officer. The Chief Election Officer shall have charge of the commission’s official records and shall be responsible for the maintenance and custody of the files and records of the commission, including the papers, transcripts of testimony and exhibits filed in proceedings, the minutes of all actions taken by the commission, and all its rulings, advisory opinions, decisions, rules, and approved forms. The Chief Election Officer and any person acting for him under his authority or under the authority of the commission shall receive all documents required to be filed with the commission and shall promptly stamp the time and date upon papers filed with the commission.
- (h) Appearance before the Commission. All parties to a proceeding shall appear in person or by a representative before the commission, provided that an officer or regular employee may appear on behalf of an association or corporation and a general partner may appear on behalf of a partnership.

History: Rule 1-85, eff 2 May 85, § 1.4.

3.0105 Public Information.

- (a) The term “public record” means any written or printed report, book or paper, map or plan of the territory or its respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required

to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual, and shall include all rules, written statements of policy, or interpretations formulated, adopted, or used by the commission (not including advisory opinions prior to deletion of identifying information), all final decisions and orders, minutes of commission meetings, and any other material filed with the commission unless accorded confidential treatment under the law or the rules of the commission.

- (b) Confidential Records. The request for an advisory opinion shall be treated as confidential information. Advisory opinions shall be public records after identifying information is deleted. The filing of the complaint, all investigation and hearing material, and any probable cause hearing shall be confidential in compliance with 6.1622 A.S.C.A., unless the person complained of requests an open session.
- (c) Inspection and Copies of Public Records. All public records shall be available for inspection in the commission's office as provided in 3 ASC 1989. Copies of public records will be furnished to any person upon request and upon payment of the fee of \$0.25 a page.
- (d) The public may obtain information matters relating to the campaign spending commission and the law it administers by inquiring during regular business hours at the offices of the commission or by submitting a written request to the commission.

History: Rule 1-85, eff 2 May 85. § 1.5.

3.0106 Proceedings Before the Commission.

(a) Filing of Legal Documents.

- (1) Place of Filing. All disclosures, complaints, requests for opinion, pleadings, submittals, petitions, briefs, memoranda, and other papers required or permitted to be filed with the commission in any proceeding shall be filed with the Chief Election Officer.

- (2) Service of Documents. The papers may be sent by mail or hand carried to the commission offices within the time limit, if any, for that filing.
- (3) Date of Filing Documents. The date of which the papers are actually received by the commission shall be considered to be the date of filing.
- (4) Form of Documents. All papers filed with the commission shall be plainly legible.
- (5) Signature; Certificate of Truth. All papers must be signed in permanent ink by the party or his duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he has read the document; that to the best of his knowledge, information and belief, every statement contained in the instrument is true and no statements are misleading; and that it is not interposed for delay.
- (6) Number of Copies. Unless otherwise specifically provided by a particular rule, or order of the commission only an original of all papers shall be filed.
- (7) Name, Address on Documents. The initial document filed by any person in any proceeding shall state on the 1st page the name and mailing address of the person or persons who may be served with any documents filed in the proceeding.

(b) Computation of Time.

- (1) In computing any period of time prescribed or allowed by these rules, order of the commission, or by any applicable statute, the day of the act, event, or default, after which the designated period time is to run, is not to be included. The last day of the period so computed is to be included unless it is a Saturday, Sunday, or a holiday, in which event the period runs until the next day which is not a Saturday, Sunday, or a holiday. When the period of time prescribed or allowed is less than 7 days intermediate Saturdays, Sundays, and holidays are excluded in the computation. As used in this

rule, "holiday" includes any day designated by 1.0501 A.S.C.A., as modified by 7.1205 A.S.C.A.

- (2) Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of the notice or other paper upon him and the notice or paper is served upon him by mail, 2 days shall be added to the prescribed period.
- (c) Continuance or Extension of Time. Whenever a party has a right or is required to take action within the period prescribed or allowed by these rules, by notice given thereunder, or by an order of the commission, or the presiding officer may
 - (i) before the expiration of the prescribed period, with or without notice, extend the period; or
 - (ii) upon motion, permit the act to be done after the expiration of a specified period. where the failure to act is clearly shown to be excusable.
- (d) Service of Process.
 - (1) By Whom Served. The commission shall cause to be served all orders, notices, and other papers issued by it, together with any other papers which it is required by law to serve. Answers, pleadings, and memoranda relating to complaints or hearings shall be served by the party filing them.
 - (2) Upon Whom Served. All papers served by either the commission or any party shall be served upon all counsel of record at the time of the filing and upon parties not represented by counsel or upon their agents designated by them or by law. Counsel entering an appearance subsequent to the initiation of the proceedings shall notify all parties of that fact.
 - (3) Service Upon Parties. The final opinion, decision, and any other paper required to be served by the commission upon a party, shall be served upon the counsel of record, if any, or the individual or his agent designated by him or by law to receive service of such papers.
 - (4) Method of Service. Service upon counsel, if any, or upon a party shall be made by

delivering a copy to him or by mailing it to him at his last known address. Service by mail is complete upon mailing. Service by personal delivery or time and place of delivery filed with the commission.

- (e) Subpoenas.
 - (1) Who May Issue. Subpoenas requiring the attendance of witnesses or the production of documentary evidence from any place within the territory of American Samoa at any designated place of hearing, may be issued by the chairman at the direction of the commission.
 - (2) Application. Application for subpoenas shall be made in writing to the commission. The application must be reasonable in scope and specify as clearly as possible documents or data desired, and show their general relevancy.
 - (3) Time of Application. For production of documentary evidence or appearance of witnesses at a hearing, application for subpoenas shall be made at least 3 days prior to the hearing. If application for a subpoena is made at a later time, the commission may, in its discretion, continue the hearing or any part thereof.
 - (4) Enforcement. Enforcement of obedience to subpoenas issued by the commission and served under these rules will be effected by written application of any member of the commission to any justice of the High Court.
- (f) Witnesses; Fees.
 - (1) All witnesses shall appear in person and shall be examined under oath or affirmation.
 - (2) Payment. Summoned witnesses shall be paid by the party in whose instance the witnesses appear. The amount of payment shall be the same fee and mileage as are paid witnesses in the courts of the territory of American Samoa.

(g) Retention of Documents by the Commission. All documents filed with or presented to the commission shall be retained in the files of the commission for the period required by law. The commission may permit the withdrawal of documents at its discretion.

(h) Consolidations. The commission, upon its own initiation or upon motion, may consolidate for hearing or for other purposes or may contemporaneously consider 2 or more proceedings which involve substantially the same parties or issues which are the same or closely related, if it finds that the consolidation or contemporaneous hearing will be conducive to the proper dispatch of its business and to the ends of justice and will not unduly delay the proceedings.

History: Rule 1-85, eff 2 May 85, § 1.6.

II. CODE OF FAIR CAMPAIGN PRACTICES

3.0110 Scope.

This rule covers the Code of Fair Campaign Practices adopted by the commission in accordance with 6.1703(b) (4) A.S.C.A.

History: Rule 1-85, eff 2 May 85, § 2.1.

3.0111 Endorsement by Candidates.

- (a) Copies of the code will be available from the commission at the office of the Chief Election Officer.
- (b) A candidate who elects to conduct his campaign in accordance with the code may furnish the commission 2 signed copies of the code at any time on or after the day he becomes a candidate.
- (c) For the duration of the campaign for which it is applicable, the commission will retain the signed copy of the code on file and check its file against the list of candidates as determined by the Chief Election Officer as provided in 6.0301(d) A.S.C.A. If a candidate has not endorsed the code, the commission will solicit his participation.
- (d) Whether a candidate has endorsed the code will be public information available on request from the commission office. Ten days prior to any

election, the commission shall issue a list of candidates who have not endorsed the code for that campaign; except in the first gubernatorial election 8 Nov 77 the list will be issued 3 days prior to the election.

History: Rule 1-85, eff 2 May 85, § 2.2.

3.0112 Violations of The Code.

Any candidate, committee, or party on behalf of a candidate, who believes that another candidate is not conducting his campaign in accordance with the code may request the help of the commission. The commission may communicate directly with both candidates in order to eliminate and correct misrepresentations, intentional or otherwise. The role of the commission will be to insure that all the facts about those charges of violations are presented to the public which in the end must judge whether there has been a violation of the code or not. A violation of this code may not be a violation of these rules or of the law.

History: Rule 1-85, eff 2 May 85, § 2.3.

III. ADVISORY OPINIONS

3.0120 Policy.

The commission will issue advisory opinions.

History: Rule 1-85, eff 2 May 85, § 3.1.

3.0121 Definitions.

“Advisory opinions” are opinions on subjects which the commission determines to be of widespread interest. With identification removed, they shall be public records available in the commission office.

History: Rule 1-85, eff 2 May 85, § 3.2.

3.0122 Request for Advisory Opinion.

- (a) Who May Request. The commission will not issue advisory opinions involving current or proposed activities of someone other than the inquirer.
- (b) Form; Content. All requests for advisory opinions shall be in writing and shall contain:
 - (1) The identity of the person requesting the opinion.

- (2) A complete statement of the facts and circumstances upon which the commission is to base its opinion.
- (3) The signature of the person requesting the opinion.

History: Rule 1-85, eff 2 May 85, § 3.3.

3.0123 Disposition of Request.

- (a) Any request which does not conform to the foregoing, or where the facts presented are considered by the commission to be inadequate for the purpose, shall be rejected.
- (b) A request for an advisory opinion is considered filed with the commission when all the information considered necessary has been furnished.
- (c) At its discretion, the commission may refuse to issue an advisory opinion. The commission will not issue opinions where:
 - (1) The issue is the subject of pending litigation.
 - (2) The question is speculative and does not involve existing facts or facts which can reasonably be expected to exist in the near future.
 - (3) The inquirer's current or proposed action would not subject him to any penalty under the laws or rules administered by the commission.
- (d) Within a reasonable time after the submission of a completed request, the commission shall consider the request and either deny it in writing, stating the commission's reason for the denial, or issue an advisory opinion on the matters contained in the petition.

History: Rule 1-85, eff 2 May 85, § 3.4.

3.0124 Hearing.

- (a) Generally, an advisory opinion will be rendered only upon facts submitted in writing. The inquirer, however, may request a hearing in writing, stating the reason he is making the request and may request to have persons attend with him. The commission in its discretion may grant a hearing. The commission at any time,

with notice to the person requesting the opinion, may interview persons who may have information desired by the commission in the consideration of a request for an advisory opinion.

History: Rule 1-85, eff 2 May 85, § 3.5.

3.0125 Adoption and Issuance of Opinion.

- (a) Except as provided in Section 3.0126, all opinions shall be adopted at a called meeting by majority vote of all the members of the commission.
- (b) The opinions may be issued over the signature of any commissioner, or chairman, as authorized by the commission.
- (c) A copy of the opinion will be delivered to the inquirer. After identifying information is deleted, a copy of each advisory opinion will be mailed to each person or party affected.

History: Rule 1-85, eff 2 May 85, § 3.6.

3.0126 Effect of Advisory Opinion.

- (a) A later formal opinion overrules earlier formal opinions or informal opinions with which it is necessarily in conflict. A later informal opinion overrules earlier informal opinions with which it is necessarily in conflict but does not overrule an earlier formal opinion.
- (b) An advisory opinion shall be applicable only to the factual situation contained in the request or set forth in the opinion. It shall not be applicable to different factual situations or where additional facts not considered in the opinion exist.
- (c) An advisory opinion, until amended or revoked, is binding on the commission in any subsequent proceedings concerning the inquirer who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by the inquirer in the request for an advisory opinion.

History: Rule 1-85, eff 2 May 85, § 3.7.

IV. ORGANIZATIONAL REPORTS

3.0130 Scope.

The rule covers the general procedure for filing organizational reports to meet the requirements of 17 ASC 1605-06.

History: Rule 1-85, eff 2 May 85, § 4.1.

3.0131 Organizational Reports.

- (a) Who Must File. Each candidate, authorized person in the case of a party, or campaign treasurer who is authorized to sign the organizational report in the case of a committee shall register with the commission in accordance with 6.1605 A.S.C.A., by filing an organizational report for each and every election or office sought, or both.
- (b) Form; Filing; Time; Copies. The organizational report shall be filed with the commission in duplicate on a form furnished by the commission at the time set forth in 6.1605 A.S.C.A. However, when an expenditure is made, incurred, or authorized by a person or contributions in an aggregate amount of more than \$100 are accepted prior to 1 July of the year the person runs for election, an organizational report must be filed within 10 days after 1 July of that year if not previously filed.
- (c) Contents. The report shall include:
 - (1) The information required by 6.1706 A.S.C.A.
 - (2) A statement of whether the committee is a continuing one.
 - (3) If the committee is organized independently of any candidate, a statement of the expected relationship to the candidate and other committees directly associated with the candidate.
 - (4) Any other information as required by the commission from time to time.
 - (5) The signature of the person authorized to sign the report for a party or committee. All reports filed by a committee with a campaign treasurer named by a candidate shall also be signed by the candidate.

History: Rule 1-85, eff 2 May 85, § 4.2.

3.0132 Changes in Information.

- (a) Any change in information previously submitted in an organizational report shall be reported to the commission within 10 days following the date of the change and shall be signed and sworn to in the same manner as the original filing.
- (b) If the change to be reported is minor, for example, only a change in the name of the campaign chairman or a deputy treasurer, it may be reported by letter. The notification must identify the organizational report to be corrected, the old information to be removed, and the new information to be recorded. If the changes are extensive, revised organizational report forms shall be filed.

History: Rule 1-85, eff 2 May 85, § 4.3.

3.0133 Discontinuance of Registration.

Any candidate who ceases to be a candidate after filing 1 or more organizational report forms with the commission or any committee or party which discontinues or determines that it will no longer receive contributions or make expenditures reportable to the commission shall so notify the commission. The notification shall include a statement as to the disposition of residual funds if the candidate, committee, or party is discontinuing.

History: Rule 1-85, eff 2 May 85, § 44.

3.0134 Identification Number.

Upon receipt of an organizational report, the commission shall acknowledge receipt thereof and notify the candidate, committee, or party filing the report of the number assigned. The identification number shall be assigned after the last day for the filing of nomination papers and shall be entered by the candidate, committee, or party on all subsequent reports or statements filed with the commission under the act, as well as on all communications concerning those reports or statements.

History: Rule 1-85, eff 2 May 85, § 4.5.

3.0135 Specific Standards.

- (a) An organization or association established and operated exclusively for the purpose of influencing the outcome of ballot issues or the nomination and election of individuals to public office is required to file an organizational report.

An organization or association established and operated for other purposes, but which also makes or receives contributions or makes expenditures, or both, to influence the outcome of ballot issues or the nomination and election of individuals to public office is also required to file an organizational report. The report shall cover those activities engaged in for the purpose of influencing the nomination and election of individuals to public office or influencing the outcome of any question or issue on the ballot or sought to be placed on the ballot at the next applicable election.

- (b) At the time of filing the organizational report a committee organized without the direct participation of the candidate shall certify to the commission whether or not it has on file the candidate's authorization or consent to accept contributions raise or hold funds or anything of value.
- (c) No contribution and no expenditure shall be accepted or made by or on behalf of a committee at a time when there is a vacancy in both the office of the chairman and the campaign treasurer.

History: Rule 1-85, eff 2 May 85, § 4, 6.

V. RECORDS AND REPORTING

3.0140 Scope.

This rule covers the general procedure relating to records to be maintained and reports to be supplied to meet the requirements of 6.1718-6.1719 A.S.C.A.

History: Rule 1-85, Eff 2 May 85. § 5.1.

3.0141 Preliminary Reports.

- (a) Who Must File. Each candidate who expends his own funds, authorized person in the case of a party, or campaign treasurer in the case of a committee shall file a preliminary report.
- (b) Form; Filing; Time; Copies. The report shall be filed on a form furnished by the commission. The report shall be filed in duplicate with the commission on the earlier of: (1) the 10th calendar day preceding each election or (2) the last working day prior to the 10th calendar day.
- (c) Content. The report shall include:

- (1) The information required by 6.1718 A.S.C.A., and additional information as the commission may reasonably require as reflected in the campaign financing report forms adopted by the commission from time to time.
- (2) A description of any adjustments or other explanatory information relevant to the contributions and expenditures reported.
- (3) The signature of the person authorized to sign the report by a party or committee. All reports filed by a committee with a campaign treasurer named by a candidate shall also be signed by the candidate.

History: Rule 1-85, eff 2 May 85. § 5.2.

3.0142 Specific Standards.

- (a) It is the responsibility of each candidate to maintain accurate and complete current records of contributions and expenditures by him or on his behalf. The manner of maintaining such records is the choice of each candidate, but records- should be maintained in sufficient detail to substantiate any challenge to the summary information reported to the commission in required reports.
 - (1) The candidate shall require that any person accepting contributions on his behalf keep a record of the source of such contributions, including ticket sales. Any unidentified ticket sales and calabash collections at coffee tours and other functions are to be treated as anonymous contributions unless obtained through multiple contributions made by 10 or more persons at the same event aggregating less than 5250 (6.1711(e) A.S.C.A.). Each of these aggregate contributions shall be reported accompanied by a description of the means, method, place, and date of receipt. Any person contributing more than \$100 in the aggregate to any one candidate by way of the cash collection provided for in this rule, in order to remain anonymous, in order to evade the recordation and reporting of contributions in excess of \$100 in the aggregate for any 1 candidate, or both, is subject to prosecution as provided under

6.1722-6.1724 A.S.C.A. Any person contributing money, cash or any valuable consideration of another person to any candidate by way of the cash collection provided for in this rule, with the intent to keep the name of such contributor anonymous or in order to evade the recordation and reporting of contributions in excess of \$100 in the aggregate for any 1 candidate, or both, is subject to prosecution under 6.1722-6.1724 A.S.C.A. No candidate, committee, or party may accept a contribution in excess of \$100 by way of the cash collection provided for in this rule without recording the name and address of that contributor.

- (2) If several contributions of less than \$100 are received from a contributor, the amounts should be totaled and the contributor's name and address and other required information should be reported when the cash and non-monetary contributions aggregate more than \$100.
- (3) The purpose of the contributions report is to disclose the source of funding. Therefore, the name of the contributor should be the name usually used for business purposes and the address should be his usual address where he may be found. A business address should be identified by the full name of the contributor's business if he is self-employed or of the contributor's employer. If any of the identifying items change from 1 July through the day of any election, the name and address previously used should be shown in any subsequent entry as well as the new information.
- (4) A record of all cash contributions which exceed \$100 shall be kept by the candidate, committee, or party which shall also issue a receipt to the donor.
- (5) Contributions received by a committee or party on the condition that the funds be contributed to or expended only on certain candidates, issues, or questions are "earmarked funds". Each committee or party receiving these funds shall disclose

the original source, ultimate recipient, and the fact that the funds are "earmarked".

- (b) Reports by candidates, political committees, and parties must be cumulative and cover the period from the closing date of the previous report filed. An ongoing committee must continue reporting its debts and obligations until extinguished.
- (c) The reports due on the 10th day before an election must be complete as of midnight of the 15th day before the election.
- (d) For reporting purposes, an expenditure is considered to be made or incurred at the time of delivery of the products, goods, or services. Where products, goods, or services are delivered for use during the election year, the expense shall be reported during the period or periods of use.
- (e) Promises to make contributions need not be reported in advance of actual payment unless they, are made in writing and exceed the amount of \$ 100.
- (f) Donations by candidates to community organizations or youth, recreation, or social groups shall be presumed to be campaign expenditures for reporting purposes if donated during the election year. This presumption may be rebutted by clear evidence showing otherwise.
- (g) Advances made by a candidate, committee, or party to provide ready cash to someone for the performance of a political campaign function can be treated as a regular expenditure. Adjustments may be made to the expenditure accounts if warranted when the accounting is made of the use of the advanced funds.
- (h) The dollar value of nonmonetary contributions should be determined by the contributor. It may be: (1) the fair market value of the item if it were to be purchased or sold; (2) the cost of the item to the contributor; or (3) the contributor's estimated value of the item if, due to extraordinary circumstances neither (1) nor (2) above would be appropriate. Any valuation other than fair market value should discount the value of the contributor's own time and labor if voluntarily given. In the event of a challenge, the burden of proof will be on the contributor to substantiate and justify the use of any valuation

of nonmonetary contributions other than fair market value or his cost. The candidate, committee or party receiving the contribution, however, should question the value of an item if it appears unreasonably low. Nonmonetary contributions should be appropriately labeled and must be reported on the schedule of contributions in the same manner as cash contributions.

- (i) The dollar value of nonmonetary contributions received by a candidate or political committee must be reported on the schedule of expenditures in the same manner as cash expenditures. The valuation of an item for reporting expenditures must be the same valuation assigned to it on the contributions schedule.
- (j) An expenditure authorized by a candidate, his authorized representative, or a campaign treasurer named by the candidate shall be attributed to the candidate for reporting purposes. A party or committee organized without the direct participation of a candidate shall maintain complete records of transactions made in behalf of a candidate, including the candidate's authorization of consent to the expenditure.
- (k) In no event shall the costs of preparing, printing, and circulating house bulletins as defined in 6.1701(i) A.S.C.A., give rise to a reporting requirement on the part of any person sponsoring the communication or those persons receiving the benefits of the publication. However, the definition of "house bulletin" shall be construed narrowly by the commission to exclude special edition publications out of the ordinary publishing cycle and communications for general distribution to the public. The exemption shall be construed to favor intraorganization communications of whatever nature.
- (l) Each candidate, campaign treasurer of a committee and any other person who is required to report expenditures shall- maintain records for at least 1 year after the filing deadline for each report on the matters required to be reported including vouchers, worksheets, and receipts which will provide in sufficient, detail the necessary information and data from which the

reports and statements may be verified, explained, or clarified, and checked for accuracy and completeness.

- (m) Any apportionment of expenditures may be made by the candidate or committee or other person making the expenditure as a part of the reports required under 19 ASC 1618-19. The method of apportionment or the amount attributable to any candidate shall be agreed upon by the candidate involved in advance of the use. The reasonableness of any apportionment or allocation formula may be challenged by the commission or by any candidate.
- (n) Each authorization by a candidate to another person or persons to raise funds or to make expenditures on behalf of the candidate shall state the name, address, and organizational affiliation of each authorized individual, the name of the candidate, the office sought and the election involved, and any limitation or restriction imposed, and it shall be signed and dated by the candidate.
- (o) All disbursements and uses of campaign funds and political contributions authorized by any candidate, committee, or party will be considered to be for the election next following the period in which the expenditure is reportable to the commission unless the person filing the required report hereunder furnishes information to justify an allocation to a later date.
- (p) Legislative Newsletter, Reports, Surveys, and Polls.
 - (1) Payment of costs incurred in the preparation, publication, and distribution of reports (i.e., legislative newsletters, reports, surveys, or polls) which influence the nomination for election, or election, to office of any candidate shall be considered an expenditure required to be reported under 6.1718-6.1719 A.S.C.A., unless specifically excepted hereafter.
 - (A) Use of campaign funds to pay for costs of such reports, surveys, or polls are always reportable expenditures.
 - (B) Use of personal funds or funds other than contributed funds for costs of such

- reports, surveys, or polls are considered reportable expenditures if: (i) expended by a person found to be a candidate as defined at 6.1701(c) A.S.C.A; or, (ii) expended by any committee as defined at 6.1701(e) A.S.C.A.
- (2) The payment of costs for the following reports, surveys, or polls are specifically excepted as reportable expenditures:
- (A) Reports, surveys, or polls of independent organizations not affiliated with any candidate and who have not received or expended any money in behalf of any candidate, whether with or without the authorization of the candidate, and whose report, survey, or poll is either available to all candidates as well as the general public or is confidential and not distributed or publicized at any time prior to an election in which the report, survey, or poll would have an influence.
- (B) Reports, surveys, or polls required by law to be made by any governmental agency and for which funds have been appropriated by law.
- (C) Reports, surveys, or polls of incumbent officeholders, not candidates, who pay for costs of publication and distribution from funds which have been specifically appropriated by law
- (D) Reports, survey, or polls of any news reporting agencies or communications media who have neither received nor contributed any monies in behalf of any candidate.
- (3) The exceptions before stated may be disallowed and found to be reportable expenditures where the report, survey, or poll directly identifies a person who is a candidate, advocates or supports his nomination for election, or election, or defeat, or is published within 90 days prior to any election day.
- (q) No person or committee authorized by the person to receive contributions or make expenditures shall hold more than 1 testimonial affair, as defined in 6.1713(a) A.S.C.A. between elections unless that person seeks election to territory wide office or shows a deficit on his last final report filed with the commission under 6.1719 A.S.C.A. In the former case, a person or his authorized committee may hold up to 1 testimonial affair in each county. In the latter case, only 1 testimonial may be held and it must be held before the end of May in the year following the election. Testimonial affairs sponsored by a party for apolitical purpose for the general benefit of the party are exempt from the limits of this rule.
- (r) There shall be a limit on the number of functions designed to raise funds .for political purposes for which the total cost of attending is \$15 a person or less of 2 functions in each representative district.

History: Rule 1-85, eff 2 May 85. , § 5.3.

3.0143 Final Reports.

- (a) Who Must File. Any person who has filed a preliminary report shall file a final report.
- (b) Time. The final report for a candidate, question, or issue on the general, special, or runoff election ballot shall be filed on or before the 20th calendar day after the general election. The final general report shall contain all information detailed in 6,1719(a) A.S.C.A., from the day after the closing date of the applicable preliminary general report through the day of the general, special, or runoff election.
- (c) Form; Filing; Copies. The final report shall be filed in duplicate with the commission on a form furnished by the commission.
- (d) Content. The report shall include:
- (1) The information required by 6.1719 A.S.C.A., and additional information as the commission may reasonably require as reflected in the campaign financing report forms adopted by the commission from time to time.

- (2) A description of any adjustments or other explanatory information relevant to the contributions and expenditures reported.
- (3) The signature of the person authorized to sign the report by a party or committee. All reports filed by a committee with a campaign treasurer named by a candidate shall also be signed by the candidate.

History: Rule 1-83, eff 2 May 85, § 3.4.

3.0144 Supplemental Reports.

- (a) Unless the commission is requested to terminate a registration, as provided in Rule 4 relating to organizational reports, a candidate is required to file supplemental reports. For the purpose of this subsection, the term “candidate” includes ‘an elected official.
- (b) Filing Dates. Reports are due every 3 months in the event of a deficit and every 6 months in the event of a surplus. Reports filed on the 5th of the month as shown below must be completed as of midnight of the 5th day before the filing date.

Deficit	Surplus
January	January
April	July
July	January
October	
January	
- (1) Supplemental reports for all candidates, committees, and parties must be filed on or before the 5th day of:
- (2) Supplemental reports following the final report filed after a special election or special general election, in the event of a deficit shall be filed every 3 months subsequent to the previous report. In the event of a surplus, filings are required every 6 months after the final report.
- (c) Form; Filing; Copies; Content. The supplemental reports shall follow the form, filing requirements where applicable, number of copies, and content of Section 3.0143.

History: Rule 1-85, eff 2 May 85, § 5.5.

VI. PROCEDURES RELATING TO COMPLAINTS, INVESTIGATIONS,

AND HEARINGS CONCERNING ALLEGED VIOLATIONS OF 19 ASC 1601-24

3.0150 Scope.

This rule covers the general procedure relating to complaints, investigations, and hearings with respect to alleged violations of the election campaign contributions and expenditures law as reflected in 6.1701 - 6.1724 A.S.C.A. and in the rules administered by the commission.

History: Rule 1-85, eff 2 May 83, § 6.1.

3.0151 Complaints Initiated by A Member

- (a) Any person who believes a violation of the law administered by the commission has occurred may file a complaint in person or by mail with the commission. Complaints may be initiated by the commission under the signature of a commissioner. Information concerning the filing or status of a complaint shall be treated as confidential by the complainant, the respondent, and the commission and its staff.
- (b) Form; Time. There is no prescribed form for a complaint, but it shall be legible and signed.
- (c) Contents. The complaint may be simply worded but shall specify:
 - (1) The identity of the party complaining and, if the complaint is made by an organization on behalf of a candidate, the organization shall allege that it has the right to represent the candidate.
 - (2) The particular ground(s) upon which the complaint is based, the specific issues involved, the name and public position of the respondent, the contentions of the complainant, and a description of the evidence he intends to introduce in support of those contentions.
 - (3) A clear and concise statement of any other relevant facts.
 - (4) The action requested.
 - (5) The complaint shall be signed by the person making the complaint, under oath taken

before any person authorized by law to administer oaths.

- (d) Upon receipt of a document which does not comply with the requirements of subsection c of this section or which does not in form or substance constitute a complaint, the commission shall notify the person signing the document and the respondent of the insufficiency.
- (e) After receipt of a complaint, the commission may:
 - (1) Cause an investigation to be made of the allegations of the complaint;
 - (2) Dismiss the complaint on the grounds that the complaint fails to state a violation as a matter of law or that the allegations alleged are contrary to information known to the commission;
 - (3) Dismiss the complaint on the grounds that the allegations are not substantiated by the investigation caused by the commission; or
 - (4) Issue a notice of hearing on the complaint, which shall specify the time, place, and date of the hearing and the alleged violation.

For the purposes of notice, all persons registered with the commission including candidates, committees, and parties, are required to inform the commission in writing of their current residence address immediately after any change thereof.

The person's most recent current address shall constitute the place of personal service upon the person by the commission of any complaint, notice of hearing, or notice of other proceedings pertaining to the person's campaign activities.

Where a person registered with the commission elects to supply the commission with a mail or post office address in lieu of his residence, then in that event that person is considered to have elected to receive all communications and personal service through the United States mails and to have thereby chosen the United States Postal Service as his agent for service of process, so that service of a complaint or other notice of proceedings shall be effective on that person upon the depositing of the complaint or

communication in the United States mails with first-class postage pre-paid thereon.

The respondent shall appear before the commission at the time and place specified in the notice of hearing. If the respondent desires to file an answer to the complaint, he shall file the original and 9 copies thereof with the commission before the time of hearing.

History: Rule 1-85, eff 2 May 85, § 6.2.

3.0152 Amendment of complaint.

Any complainant may amend the complaint at the discretion of the commission at any time prior to the issuance of the final order based thereon.

History: Rule 1-85, eff 2 May 85, § 6.3.

3.0153 Withdrawal of complaint.

The complainant may withdraw the complaint at any time with the permission of the commission.

History: Rule 1-85, eff 2 May 85, § 6.4.

3.0154 Investigation.

- (a) The commission may order the staff investigative attorney or any other person to conduct an investigation on the allegations of a complaint. The investigator shall have all of the authority to conduct discovery proceedings as permitted in criminal cases.
- (b) The investigator shall file an advisory report with the commission within the time as the commission may order.
- (c) If the commission dismisses the complaint, whether before or after investigation, the commission shall so notify the complainant and state the reason for dismissal.

History: Rule 1-85, eff 2 May 85, § 6.5.

3.0155 Probable Cause Hearings.

- (a) Time; Place; Date. The hearing shall be held at the time and place specified in the notice of hearing, but may be continued from day to day and adjourned to a later date or to a different place by the commission.
- (b) Confidentiality. Unless the respondent requests an open session on or before the date set for the hearing, the hearing shall be closed to the public

arid all matters presented at the hearing, including all documentary or testimonial evidence, shall not be made public by any person except as allowed by 6.1722(G) and (g) A.S.C.A.

- (c) Prehearing Conference. If the commission determines that the issues will be complex, it may order a prehearing statements specifying the issues, investigative attorney and the respondent submit prehearing statements specifying the issues, theory of case, proposed evidence, and exhibits to be submitted, provided that the respondent need not comply if he exercises his constitutional rights against self-incrimination.
- (d) Presentation of Evidence.
 - (1) The staff investigative attorney and the respondent shall be afforded an opportunity to present evidence and argument on all issues involved.
 - (2) The rules of evidence shall be the same as those set out in 4.1027 A.S.C.A.
 - (3) The burden of proof shall be on the staff investigative attorney to show by a preponderance of evidence that probable cause of a violation of the law or rules of the commission exists.
- (e) Record of the Hearing.
 - (1) The record of the hearing shall be compiled in conformance with 4.1032 A.S.C.A.
 - (2) Unless specifically ordered by the commission, testimony shall not be reported verbatim. The complainant and the respondent shall be entitled to a copy of the record of the hearing or any part thereof upon application to the commission and upon payment of the cost thereof.

History: Rule 1-85, eff 2 May 85, § 6.6.

3.0156 Reporting Probable Cause Findings.

- (a) If, at the conclusion of proceedings, the commission determines by majority vote of all the members that probable cause of a violation does not exist, then the complaint shall be denied, and the entire records of the proceedings shall be kept confidential at the option of the respondent. Both complainant and respondent

shall be promptly served with a certified copy of the commission's final decision.

- (b) In the event the commission determines by majority vote of all the members that probable cause of an unintentional violation exists, the commission shall promptly serve the complainant and respondent with a certified, confidential copy of its final decision and order. Respondent may be ordered to temporarily cease and desist violation of the law or file any report, statement, or other information required by law or commission rule.
- (c) If, however, the commission determines by majority vote of all the members that probable cause of a willful violation exists, it shall promptly advise the Chief Election Officer of its findings. In addition, both the complainant and the respondent shall be promptly served with a certified copy of the commission's final decision.
- (d) In accordance with standards uniformly applied, the commission will request the office of the Attorney General to prosecute when the commission's final decision indicates that probable cause of a willful violation exists. A copy of the commission's final decision shall accompany the request for prosecution.

History: Rule 1-85, eff 2 May 85, § 6.7.

3.0157 Defective or Deficient Reports.

- (a) Any person who has filed a defective or deficient report shall correct or satisfactorily explain the same within such time as the commission may specify by written notice.
- (b) The commission may issue and serve with the notice of correction, a written notice of hearing in accordance with subsection e of Section 3.0151, which shall state that if the respondent does not cause the filing of a corrected report or does not satisfactorily explain the deficiency or defectiveness of a report within the time allowed by the commission, that a probable cause hearing on the violation will be held at the time, date, and place specified in the notice of hearing.

History: Rule 1-85, eff 2 May 85, § 6.8.

VII. DISPOSITION OF FUNDS

3.0160 Scope.

This rule governs the general procedure for filing a report with the commission covering the amounts and manner of disposition of funds to meet the requirements of 6.1720 A.S.C.A.

History: Rule 1-85, eff 2 May 85, § 7.1.

3.0161 Disposition Report.

- (a) Who Must File. Any candidate who ceases to be a candidate for any reason after filing 1 or more, organizational reports, and any committee or party that discontinues or determines that it will no longer receive contributions or make expenditures reportable to the commission shall file a disposition of funds report.
- (b) Form; Filing; Time; Copies. The report shall be filed in duplicate with the commission on a form furnished by the commission, on or before the date the distribution is to be made.
- (c) Content. The report shall include:
 - (1) information required to identify the person filing the report, the amount and source of funds to be distributed, the manner of distribution, and additional information as the commission may reasonably require as reflected in the campaign financing report forms adopted by the commission from time to time.
 - (2) The signature of the candidate or person authorized to sign the report by a party or committee. All reports filed by a committee with a campaign treasurer named by a candidate shall also be signed by the candidate.

History: Rule 1-85, eff 2 May 85, § 7.2.

3.0162 Specific standards:

- (a) Persons other than elected officials or candidates who failed to be nominated or elected who wish to dispose of their residual funds must make a proportionate distribution of the residual amount to...all donors. Failure to make proportionate distribution to donors shall be prima facie evidence of failure to maintain adequate contribution records.

- (b) Elected officials or candidates whose names have appeared on the ballot may make a proportionate distribution to donors or they may contribute any residual funds to any candidate, party, charity, nonprofit organization, or to the territorial general fund in the case of a territorial office.
- (c) To qualify as a proportionate distribution there is no requirement that residual funds be distributed to persons contributing less than \$10 or that distributions be made in amounts less than \$5; provided, however, that no contributor shall receive more than his original contribution.
- (d) An elected official shall be presumed to be a candidate until the close of filing for nomination in the year in which his current term of office expires for purposes of this rule.

History: Rule 1-85, eff 2 May 85, § 7.3.

VIII. ADOPTION, AMENDMENT OR REPEAL OF RULES

3.0170 Scope.

This rule governs the procedure to be used to adopt, amend or repeal commission rules.

History: Rule 1-85, eff 2 May 85, § 8.1.

3.0171 Commission Initiation.

When upon its own motion the commission proposes to adopt, amend or repeal a rule, a notice of proposed rulemaking will be published as required by law, under 4.1001 A.S.C.A., et seq. the Administrative Procedure Act.

History: Rule 1-85, eff 2 May 85, § 8.2.

3.0172 Conduct of Hearing on Rules.

- (a) Public Hearing. A public hearing shall be held for all proposed issuance, amendment, or repeal of rules initiated by the commission.
- (b) Presiding Officer. Each such hearing shall be conducted by the chairman or his designee. The hearing shall be conducted in 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 hearing shall be held at the time and place set in the notice of

hearing, but may at a time and place be continued from day to day or adjourned to a later date or to a different place without notice other than the announcement at the hearing.

- (d) **Order of Hearing.** At the commencement of the hearing the presiding officer shall read the notice of hearing and shall then outline briefly the procedure to be followed. Testimony shall then be received with respect to the matters specified in the notice of hearing in an order as the presiding officer shall prescribe.
- (e) **Submission of Testimony.** All interested persons shall be given reasonable opportunity to offer testimony with respect to the matters specified in the notice of hearing. Every witness shall, 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(s) before the hearing.
- (f) **Oral and Written Presentation at the Hearing.** All interested persons or agencies of the territory or its political subdivisions will be afforded an opportunity to submit data, views or arguments which are relevant to the issues orally or in writing. Written testimony should be submitted to the commission at its office 24 hours or more prior to the hearing. Person submitting written testimony on the day of the hearing must furnish 15 copies of such testimony to the commission staff prior to the hearing. In addition, or in lieu thereof, persons or agencies may also file with the commission 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 of the Testimony.** Unless otherwise specifically ordered by the presiding officer, testimony given at the hearing shall not be reported verbatim. All supporting written statement, maps, charts, tabulations, or similar data offered at the hearing, and which are considered by the presiding officer to be authentic and relevant, shall be received and made a part of the record. Unless the presiding

officer finds that the furnishing of copies is impracticable, 2 copies of the exhibits shall be submitted.

History: Rule 1-85, eff 2 May 85, § 8.3.

3.0173 Commission Action.

At the close of the final public hearing, the presiding officer shall announce the decision of the commission or announce the date when it intends to make a decision.

History: Rule 1-85, eff 2 May 85, § 8.4.

3.0174 Emergency Rulemaking.

The commission may adopt emergency rules as provided by law.

History: Rule 1-85, eff 2 May 85, § 8.5.

3.0175 Petition, for Adoption, Amendment, or Repeal of Rules.

- (a) **Who May File.** Any interested person or organization may petition the commission for the adoption, amendment, or repeal of any rule of the commission.
- (b) **Form and Content of Petition.** The petition need not be in any special form but it shall contain the following:
 - (1) The name, address, zip code and telephone number of each petitioner;
 - (2) The signature of each petitioner;
 - (3) A statement of the nature of petitioner's interest;
 - (4) A draft or substance of the proposed rule or amendment or a designation of the provisions sought to be repealed, or both;
 - (5) A statement of the reasons in support of the proposed rule, amendment, or repeal; and
 - (6) Any other information pertinent to the petition.
- (c) **Filing and Service.** An original copy of the petition shall be filed with the commission. Each petition be date-stamped upon receipt and will become a public record upon filing. The commission may require the petitioner to serve

other persons or governmental agencies known to be interested in the proposed rulemaking.

(d) Granting or Denial of Petition; Time Limitation,

(1) The commission shall within 30 days after the submission of the petition either deny the petition in writing, stating its reasons for its denial, or initiate proceedings in accordance with the procedure provided in Sections 3.0171 and 3.0172 for the adoption, amendment, or repeal of rules. Any petition which does not conform to the requirements specified herein may be rejected,

(2) No public hearing, oral argument or other form granting or denying the petition.

(e) Other Commission Action. Nothing in this rule shall operate to prevent the commission, on its own motion, from acting on any matter disclosed in any petition for the adoption, amendment, or repeal of rules.

History: Rule 1-85, eff 2 May 85. § 8.6.

TITLE 3 - CHAPTER 02 – REGISTRATION

Sections:

3.0201	Scope
3.0202	Definitions
3.0210	Registration in Person
3.0220	Registration in Absentia
3.0230	Re-registration
3.0240	Deadline

3.0201 Scope.

This chapter provides the procedures for registration, both in person and in absentia.

Pursuant to ASCA §6.0214(a), any person who desires to vote in local elections for the office of Representative to the House of Representatives (Fono), or for the offices of Governor/Lt. Governor, or for issue(s) placed on a ballot, must appear in person before an election officer to register.

Pursuant to ASCA §6.0214(d), uniformed services and overseas persons, who are unable to appear in person and who have not previously registered to vote in American Samoa, may register in absentia.

However, such individuals, upon qualification, may only vote for the office of Delegate to the United States House of Representatives.

History: Rule 1-2004, eff. June 16 04.

3.0202 Definitions.

In this chapter, the following terms have the meanings indicated:

(a) “Uniformed services voters” includes a member of a uniformed service of the U.S. on active duty, or a merchant marine, who is otherwise qualified to vote in American Samoa, and who, by reason of such active duty or merchant marine service, is absent from American Samoa. This category also includes the spouse or dependent of the active-duty uniformed service member/merchant marine.

(b) “Overseas voter” includes a uniformed service voter who, by reason of active duty or service, is absent from American Samoa on the date of the election; or a person who resides outside American Samoa, and was domiciled in American Samoa before leaving the Territory, and is qualified to vote in American Samoa; or a person who resides outside American Samoa, and (but for such residence) would be qualified to vote in American Samoa (the last place in which he was domiciled).

History: Rule 1-2004, eff. June 16 04.

3.0210 Registration in Person.

(a) Individuals who are physically present in American Samoa, and who desire to register to vote, must appear in person before an election officer.

(b) An application in the form of an affidavit, containing the following information, must be completed:

- (1) name;
- (2) Social Security number, if any;
- (3) date of birth;
- (4) current residence;
- (5) place of current employment;

- (6) a statement that the American Samoa residence was acquired with the intent to make American Samoa the person's legal residence with all the accompanying obligations therein;
 - (7) that the person is a U.S. citizen or U.S. national;
 - (8) signature of the applicant; and
 - (9) sworn to before an election officer.
- (b) Proof of qualifications and residency must be provided upon request by the Election Office. A list shall be posted in a public area of the Election Office, specifying those documents that are acceptable as proof of qualifications and residency. Copies of such documentation must be maintained in the qualified voter's file.

History: Rule 1-2004, eff. June 16 04.

3.0220 Registration in Absentia.

- (a) Uniformed services voters and overseas voters may register to vote for the office of Delegate to the U.S. House of Representatives without having to appear before an election officer in American Samoa.
- (b) An application to register must be in writing. The application must contain the following information:
 - (1) name;
 - (2) Social Security number, if any;
 - (3) date of birth;
 - (4) residence in American Samoa;
 - (5) current mailing address outside of American Samoa;
 - (6) place of current employment;
 - (7) a statement that the American Samoa residence was acquired with the intent to make American Samoa the person's legal residence with all the accompanying obligations therein;
 - (8) that the person is a U.S. citizen or U.S. national;

- (9) signature of the applicant; and
 - (10) sworn to by a notary public, commissioned officer, consular officer or other authorized person.
- (c) An application to register need not be on any specific form or in any specific format. The following forms are also acceptable for voter registration:
- (1) Federal Post Card Application; and
 - (2) any other form prescribed by the National Voter Registration Act. (d) An application to register must be mailed or FAX'ed directly to the Election Office. If a facsimile medium is utilized, the application must be mailed after it is FAX'ed.
- (e) Proof of qualifications and domiciliary must be provided upon request by the Election Office. The request by the Election Office may specify the type of documents that are acceptable as proof of qualifications and domiciliary. Copies of such documentation must be maintained in the qualified voter's file.

History: Rule 1-2004, eff. June 16 04.

3.0230 Re-registration.

- (a) Any previously qualified voter whose name has been removed from the Official Roll of registered voters may apply to have his name restored in the Official roll.
- (b) When a previously qualified voter appears in person before an election officer to re-register, he must complete and sign a new registration application. Copies of documentation that previously established the voter's qualifications, and that is maintained in the voter's file, may be utilized to establish the voter's qualifications. However, the Election Office may require further proof of residency.
- (c) When a previously qualified voter who is not present in American Samoa requests in writing to re-register, the election officer must compare the signature in the written request to that contained in the voter's file. If the signatures do not match, the Election Office may require

further proof from the applicant. If the signatures match, the Election Office must complete a new registration application with the updated information received from the applicant. Copies of documentation that previously established the voter's qualifications and domiciliary in American Samoa, and that is maintained in the voter's file, are sufficient to reestablish the voter's qualifications.

History: Rule 1-2004, eff. June 16 04.

3.0240 Deadline.

All applications to register or re-register must be made or postmarked not less than thirty (30) days before an election.

History: Rule 1-2004, eff. June 16 04.

TITLE 3 - CHAPTER 03 – CANDIDATES

Sections:

3.0310 Filing Fees

3.0310 Filing Fees.

Candidates for the offices of Governor and Lieutenant Governor of American Samoa, Delegate to the House of Representatives of the Congress of the United States, and representatives to the House of Representatives of the Legislature of American Samoa, shall pay the following non-refundable fees when filing their respective candidacy petition:

Governor & Lt. Governor \$500.00

Delegate/Congress \$500.00

Representative/Fono \$300.00

History: Rule 1-2004, eff. June 16 04.

TITLE 3 - CHAPTER 11 – ABSENTEE VOTING

Sections:

3.1102 Counting of Absentee Ballots

3.1102 Counting of Absentee Ballots.

Absentee ballots secured in the absentee ballot container pursuant to A.S.C.A. §6.1106, shall be counted pursuant to A.S.C.A. §6.1108, as amended.

History: Rule 1-2004, eff. June 16 04.

TITLE 4 – GOVERNMENT EMPLOYEES

Chapters:

- I. GENERALLY*
- 01 Administration and General Provisions
- 02 Definitions
- 03 Recruitment and Placement
- 04 Classification and Pay
- 05 Hours, Leaves and Absences
- 06 Incentive and Tenure Awards
- 07 Conduct
- 08 Termination, Layoff and Adverse Actions
- 09 Appeal, Grievance, and Administrative Review
- 10 Contract Specialists
- 11 Equal Opportunity-Affirmative Action
- 12 Development and Training
- 13 Travel
- 14 Territory of American Samoa Deferred Compensation Plan

- II. AMERICAN SAMOA POWER AUTHORITY PERSONNEL RULES*
- 20 Administration and General Provisions
- 21 Definitions
- 22 Recruitment and Placement
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- 28 Termination, Layoff and Adverse Actions
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- 30 Contract Specialists
- 31 Equal Opportunity-Affirmative Action
- 32 Development and Training
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- 34 Employee Safety
- 35 Personnel Management Information System

TITLE 4 – GENERALLY -CHAPTER 01 – ADMINISTRATION & GENERAL PROVISIONS

Sections:

- 4.0101 Applicability-Position categories.

- 4.0102 Administration.
- 4.0103 Agency head responsibilities-Delegation.
- 4.0104 Investigative authority.
- 4.0105 Enforcement authority.
- 4.0106 Discrimination prohibited.
- 4.0107 Gender.

4.0101 Applicability-Position categories.

This title applies to all career service positions and employees. The territorial personnel system is composed of career service positions and excepted positions.

History: Rule 10-81, eff 29 Jul 81, § 1.1.

4.0102 Administration.

The director is responsible to the Governor for exercising leadership in and for the administration all aspects of public personnel management covered in this title, in accordance with appropriate ASG and U.S. statutes and rules. The director shall develop and promulgate rules, standards, and procedures designed to promote the efficiency of the territorial service and to serve the needs of its people. The director shall maintain a system of periodic review to determine that all rules relating to his assigned responsibilities are being carried out. Whenever such review reveals failure on the part of any individual or department to comply with established policies, the director will take such action as may be considered appropriate.

History: Rule 10-81, eff 29 Jul 81, § 1.2.

4.0103 Agency head responsibilities
Delegation.

- (a) Personnel administration is a line function in government, each agency head being responsible for carrying out the basic personnel development and management requirements of his own organization, regardless of size or number of employees, included in this responsibility are:
 - (1) cooperation with the office of manpower resources;
 - (2) prompt notification to OMR of personnel actions;

- (3) active, concerned leadership in assisting employees to carry out individual development plans;
- (4) prompt and accurate action in all hiring of new employees, promotions, transfers, and disciplinary actions in conformance with this title.

(b) The training and technical aspects of personnel administration may be delegated to supervisors, trainers, and personnel officers, but the basic responsibility for overall administration in each agency remains at the top.

History: Rule 10-81, eff 29 Jul 81, § 1.3.

4.0104 Investigative Authority.

The director may make investigations as necessary to enforce Title 7 A.S.C.A., et seq. and other pertinent portions of law and the rules governing employment. This may include investigations into the qualifications and suitability of applicants for positions.

History: Rule 10-81, eff 29 Jul 81, § 1.4.

4.0105 Enforcement Authority.

Whenever the director finds that any person has been appointed to, or is holding or performing the duties of, a position in violation of any of the laws and rules administered by the director, the director is authorized after giving due notice and opportunity for explanation, to certify the facts to the department with specific instructions for corrective action. Whenever the director issues such specific instructions for corrective actions, the department head concerned shall comply with the director’s orders and make a report thereon to the director. If the department head fails to do so, the director shall certify the facts to the ASG treasurer, with a copy to the department concerned, and thereafter no payment shall be made of salary or wages according to the employee in question. Whenever the director finds that any officer or employee has violated the laws and rules administered by the director, he shall take legal action to secure compliance or other appropriate response under the law. Whenever the director finds that procedures have not been followed, he may directly instruct the agency to take corrective action.

History: Rule 10-81, eff 29 Jul 81, § 1.5.

4.0106 Discrimination Prohibited.

There shall be no discrimination in employment against any person on the basis of race, religious beliefs, political beliefs, color, age, sex, national origin, marital status, or physical and mental handicap, except for bona fide occupational or legal requirements.

History: Rule 10-81, eff 29 Jul 81, § 1.6.

4.0107 Gender.

Words used in the masculine gender in this title, except for 7.13, include the feminine and neuter.

History: Rule 10-81, eff 29 Jul 81, § 1.7.

TITLE 4 - CHAPTER 02 – DEFINITIONS

Sections:

- 4.0201 Applicability of definitions.
- 4.0202 Abandonment of position.
- 4.0203 Accrued leave.
- 4.0204 Accumulated leave.
- 4.0205 Acting appointment.
- 4.0206 Administration.
- 4.0207 Administrative authority.
- 4.0208 Repealed.
- 4.0209 Agency.
- 4.0210 Annual leave.
- 4.0211 Appeal.
- 4.0212 Appointing authority.
- 4.0213 Apprenticeship.
- 4.0214 Areas of training.
- 4.0215 ASG.
- 4.0216 Assembled examination.
- 4.0217 Basic salary rate.
- 4.0218 Basic training.
- 4.0219 Board.
- 4.0220 Bumping.
- 4.0221 Career service.
- 4.0222 Certificate of eligibles.
- 4.0223 Certification.
- 4.0224 Class.
- 4.0225 Compensatory time.
- 4.0226 Competitive personnel action.
- 4.0227 Conference leadership.
- 4.0228 Conflict of interest.
- 4.0229 Contagious disease.
- 4.0230 Contract specialist.
- 4.0231 Cooperative education plan.
- 4.0232 Course of study.

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4.0233	Demotion.	4.0282	Medical certificate.
4.0234	Department.	4.0283	Minimum qualifications.
4.0235	Desirable qualifications.	4.0284	Mockup.
4.0236	Detail.	4.0285	Morale.
4.0237	Director.	4.0286	Motion study
4.0238	Disabled veteran.	4.0287	Motivation.
4.0239	Dismissal.	4.0288	Noncompetitive personnel action.
4.0240	Education.	4.0289	Nonstandard workweek.
4.0241	Educational counseling.	4.0290	Off-site training.
4.0242	Elevation	4.0291	On-the-job training.
4.0243	Eligible.	4.0292	Orientation training.
4.0244	Emergency appointment.	4.0293	Out-service training.
4.0245	Employee.	4.0294	Overtime.
4.0246	Employee development.	4.0295	Part-time employment.
4.0247	Employee relations.	4.0296	Pay adjustment.
4.0248	Excepted service.	4.0297	Performance rating.
4.0249	Executive development.	4.0298	Performance standard.
4.0250	Executive ungraded positions.	4.0299	Periodic increment rate.
4.0251	First-line supervision.	4.0300	Permanent employee.
4.0252	Follow-up training.	4.0301	Personnel management.
4.0253	Full biweekly pay period.	4.0302	Position.
4.0254	Full-time employment.	4.0303	Position description.
4.0255	Grievance.	4.0304	Post-training.
4.0256	Holidays.	4.0305	Pre-assignment training.
4.0257	Human relations.	4.0306	Preemployment training.
4.0258	Human relations training.	4.0307	Preference eligible.
4.0259	Incentive awards.	4.0308	Premium payment.
4.0260	Induction training.	4.0309	Probationary period.
4.0261	In-service training.	4.0310	Program.
4.0262	Institute.	4.0311	Promotion.
4.0263	Internship.	4.0312	Public administration.
4.0264	Intervening salary steps.	4.0313	Rating.
4.0265	Job analysis.	4.0314	Reassignment.
4.0266	Job code.	4.0315	Reduction-in-force.
4.0267	Job cost.	4.0316	Reduction in salary.
4.0268	Job evaluation.	4.0317	Refresher training.
4.0269	Job family.	4.0318	Register.
4.0270	Job rotation.	4.0319	Reinstatement.
4.0271	Job standard.	4.0320	Related training.
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4.0273	Leave without pay.	4.0322	Resignation.
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4.0275	Leave year.	4.0324	Retraining.
4.0276	Lecture.	4.0325	Reversion.
4.0277	Line.	4.0326	Salary range.
4.0278	Line responsibility.	4.0327	Screening committee.
4.0279	Management.	4.0328	Selecting authority.
4.0280	Manpower	4.0329	Selective certification.
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- 4.0331 Sick leave.
- 4.0332 Skill training.
- 4.0333 Standard workday.
- 4.0334 Standard workweek.
- 4.0335 Supervisor.
- 4.0336 Suspension.
- 4.0337 Temporary employment.
- 4.0338 Termination.
- 4.0339 Training aids.
- 4.0340 Training committee.
- 4.0341 Training plan.
- 4.0342 Training policy.
- 4.0343 Training timetable.
- 4.0344 Transfer.
- 4.0345 Trial service period.
- 4.0346 Tuition.
- 4.0347 Unassembled examination.
- 4.0348 Veteran.
- 4.0349 Work simplification.

4.0201 Applicability of Definitions.

The definitions set out in this chapter apply throughout this title, except 4.13, unless the context clearly indicates another meaning.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0202 Abandonment of Position.

“Abandonment of position” means failure of an employee to report for duty or to return from leave for 5 or more consecutive work days.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0203 Accrued Leave.

“Accrued leave” means leave earned by an employee during the current calendar year that is unused at any given time during that calendar year.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0204 Accumulated Leave.

“Accumulated leave” means unused leave remaining to the credit of an employee at the beginning of a new calendar year.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0205 Acting appointment.

“Acting appointment” means a temporary appointment made to a supervisory or managerial position.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0206 Administration.

“Administration” means that activity of management which fulfills or carries out the objectives, or goals, for which the organization or project is established. It includes that phase of management that lays down and directs policies and procedures by which resources, human and otherwise can best be used to attain established goals, for which it demands that there be continuous unification of data, facts, and opinions collected from varied sources, and through which there must be channeled a free flow of information, suggestions, ideas, and plans to and from all levels-up and down, as well as across.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0207 Administrative Authority.

Administrative authority, applicable only to the judiciary, means the official or officials with primary administrative responsibility, as delegated by the Chief Justice.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0208 Administrative Leave.

Repealed by Rule 5-87 § 3.

4.0209 Agency.

“Agency” means an office, department, or other separate unit or division, however designated, of ASG. It includes any unit of government established by law or the Chief Executive, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0210 Annual leave.

“Annual leave” means authorized absence from duty with pay to allow employees a vacation period for rest and relaxation and to provide time off for personal and emergency purposes. The use of annual leave must be officially authorized prior to being taken.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0211 Appeal.

“Appeal” means response by an individual to action taken against him. 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 title.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0212 Appointing Authority.

“Appointing authority” means the person lawfully authorized to make appointments. The appointing authority for the Executive Branch of the ASG is the director of manpower resources. The appointing authority for the High Court is the Chief Justice.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0213 Apprenticeship.

“Apprenticeship” means a comprehensive program for training the learner toward a specialized trade or craft under the full responsibility of the employer and on a long-term basis. It includes thorough instruction in the principles and practices of the particular trade or craft as well as in academic and related subjects.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0214 Areas of Training.

“Areas of training” is a term used to include the training activities for certain classes of positions, such as clerical, skilled trades, and professional, and for programs of training such as orientation, supervision, and safety.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0215 ASG.

“ASG” means American Samoa Government, as does “the government”.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0216 Assembled Examination.

“Assembled examination” means an examination for which applicants are required to assemble or be physically present at an appointed time and place.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0217 Basic Salary Rate.

“Basic salary rate” means the dollar amount of the step of the salary range to which the employee is

entitled, before any deduction, and exclusive of additional compensation of any kind.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0218 Basic Training.

“Basic training”, as part of induction, means the fundamental or essential training required for a position.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0219 Board.

“Board” means the personnel advisory board, which hears and investigates all appeals resulting from employee actions.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0220 Bumping.

“Bumping” means the replacement of an incumbent subject to reduction-in-force by another employee who has greater seniority.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0221 Career Service.

“Career service” means that system of personnel administration based on merit principles which provides for the attraction, selection, and retention of the best qualified of our citizens for permanent employment in the state government service. Entry is normally through competitive examination, and formalized channels of advancement and training are provided. Career service covers all employees of the government not in excepted status.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0222 Certificate of Eligibles.

“Certificate of eligibles” means the official document through which eligibles are referred for employment consideration.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0223 Certification.

“Certification” means the process by which the names of qualified eligibles are referred.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0224 Class.

“Class” means 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.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0225 Compensatory Time.

“Compensatory time” means time off in lieu of cash payment for over-time.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0226 Competitive Personnel Action.

“Competitive personnel action” means a type of personnel action which can be effected only if applicable competitive procedures; i.e., those governing advertising and examining, have taken place.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0227 Conference Leadership.

“Conference leadership” means the art of planning, leading, guiding, and directing a conference.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0228 Conflict of Interest.

“Conflict of interest” means 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.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0229 Contagious Disease.

“Contagious disease” means a disease requiring isolation of the patient, quarantine, or restriction of movement, as prescribed by Wealth authorities.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0230 Contract Specialist.

“Contract specialist” means a person who has entered into an agreement with the government or High Court to perform specified duties and responsibilities for a specific period of time, who is not in the ASG civil service.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0231 Cooperative Education Plan.

“Cooperative education plan” means training in which trainees alternate between periods of formal instruction in educational institutions and guided learning on the job through work experience related to the formal instruction.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0232 Course of Study.

“Course of study” means a training plan having a series of instructional units which have been developed to accomplish a specific training objective.

History: Rule 10-81, eff 29 Jul 81, § (part).

4.0233 Demotion.

“Demotion” means change of an employee from a position in 1 class to a position in another class having a lower salary range.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0234 Department.

“Department” means an entity of the Executive Branch headed by a director nominated by the Governor and confirmed by the Fono. This term includes departments, offices, and agencies.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0235 Desirable Qualifications.

“Desirable qualifications” means 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.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0236 Detail.

“Detail” means 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 he is detailed.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0237 Director

“Director” means the director of the office of manpower resources.

History: Rule 10-8 1, eff 29 Jul 81, § 2.0 (part).

4.0238 Disabled Veteran.

“Disabled veteran” means 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 Veterans’ Administration or a military department of the United States.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0239 Dismissal.

“Dismissal” means the termination of employment of a permanent employee for cause or of a probationary employee as specified in this title.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0240 Education.

“Education” means the formal impartation or acquisition of knowledge, skill, or discipline of mind.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0241 Educational Counseling.

“Educational counseling” means the act of conferring with a person for the purpose of aiding him in making choices and adjustments relating to schools, course, curriculum, and study.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0242 Elevation.

“Elevation” means restoration of an employee to the higher classification, with permanent status, which he had prior to having been granted a voluntary demotion.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0243 Eligible.

“Eligible” means an applicant whose name is on a register of persons who have qualified for a particular class of positions.

History: Rule 10-8 1, eff 29 Jul 81, § 2.0 (part).

4.0244 Emergency Appointment.

“Emergency appointment” means an appointment to a position pending the establishment of a register for that class or for emergency reasons, not to exceed 30

calendar days unless extended as provided by this title.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0245 Employee

“Employee” means any individual employed in the service of the government under the appointing authority of the director.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0246 Employee Development.

“Employee development” means all planned, supervised experience, training, and/or education that enhances the individual’s usefulness as an employee, and promotes their worklife growth.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0247 Employee Relations.

“Employee relations” means the contacts and relationships between management and the employees in an organization.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0248 Excepted Service.

“Excepted service” means elective positions; district, county, and village officials; department heads, officers, and members of an Territorial board, commission, or other territorial agency whose appointments are made by the Governor or are required by law to be confirmed by one or both houses of the Fono; Justices and judges of the Judicial Branch; staff members of the two chambers of the Fono with the exception of the legislative reference bureau; and employees serving under contracts.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0249 Executive Development.

“Executive development” means a plan for the creation of career executives through the systematic development of outstanding employees.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0250 Executive Ungraded Positions.

“Executive ungraded positions” means those positions of cabinet rank within the Executive Branch and special or executive advisors to the Governor.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0251 First-line Supervision.

“First-line supervision” means that level of supervision directly over the rank-and-file or nonsupervisory employees and forming the starting point upward for the direct line of authority and communications to top management.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0252 Follow-up Training.

“Follow-up training” means attention given to employees after initial training to ensure and facilitate their application of new skills and information.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0253 Full biweekly Pay Period.

“Full biweekly pay period” means as follows:

An employee shall be considered, for leave purposes, to have been employed for a full biweekly pay period if he has been in a pay status, or a combination of pay status and non-pay status, during all of the days within such period, exclusive of holidays and all nonwork days established by the Governor.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0254 Full-time Employment.

“Full-time employment” means regularly scheduled employment requiring an average of 40 hours of work per week. However, for certification from a register, work between 32 and 40 hours per week shall be considered full time.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0255 Grievance.

“Grievance” means an employee’s expressed feeling of dissatisfaction with aspects of his working conditions and working relationships which are outside of his control. A grievance is not an appeal.

History: Rule 10-31, eff 29 Jul 81, § 2.0 (part).

4.0256 Holidays.

“Holidays” means days set aside to celebrate a religious, state, or other event for which government employees receive time off with pay. Holidays are established by law or are designated by the Governor.

History: Rule 10-81, eff 29 Jul 81, § 2.0(part).

4.0257 Human Relations.

“Human relations” means the integration of manpower into an effective operational system. Effective conduct of human relations is based upon good communications, which is transmitting an idea so as to make it understood and motivating the recipient to take the right action. The will to do things is generated by people and without this no productive operation is possible.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0258 Human Relations Training.

“Human relations training” means the development of those techniques, habits, skills, and attitudes that will enable individuals to supervise and work effectively with others.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0259 Incentive Awards.

“Incentive awards” means recognition for employees who demonstrate exceptional resourcefulness of skills or perform exceptional acts.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0260 Induction Training.

“Induction training” means in-service training to familiarize an employee with a new assignment, including policies, procedures, and other matters affecting conditions of work and safety precautions, performance standards, and other details.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0261 In-service Training.

“In-service training” means training provided by an agency or organization for its employees in order to, increase their effectiveness in their present assignments, or to prepare for future assignments using the, resources and facilities within the agency and/or within the jurisdiction of the territorial government. The term “staff development” is also used.

History: Rule 10-8 1, eff 29 Jul 81, § 2.0 (part).

4.0262 Institute.

“Institute” is sometimes applied to full-time training programs ranging in duration from a few days to several weeks, utilizing various training methods, and dealing with a limited or specific subject.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0263 Internship.

“Internship” means a position or assignment that gives an employee planned work experience as a part of a training program, which emphasizes the application of theories, principles, and techniques to operating situations.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0264 Intervening Salary Steps.

“Intervening salary step.” means all increment steps in a salary range except the lowest and highest.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0265 Job Analysis.

“Job analysis” means:

- (1) the process of breaking down a position, duty, or task into component parts including what is done, how it is done, and skills and knowledge needed. The technique is used in many phases of management, such as training, placement, classification, and work simplification;
- (2) the resulting statement of information;
- (3) in personnel administration, a complete analysis of all of the job positions in an establishment for the put-POSE of learning their requirements in terms of ability, and their relationships to each other and to the establishment. It may be, for example, the basis for a program of job evaluation.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0266 Job Code.

“Job code” means an eight-digit code designating a class in terms of its excepted or nonexcepted status, salary structure to which assigned, grade level, and job family.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0267 Job Cost.

“Job cost” means the cost arrived at by method of cost accounting which collects charges for material, labor, and allocated overhead in the production of a specific order or a finished unit or units.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0268 Job Evaluation.

“Job evaluation” means a comprehensive termination of the relative worth and importance of all the jobs and positions in an establishment. A typical procedure involves the assignment of values to various job skills and characteristics, and a totaling of these values for each job on the basis of a job analysis. A job-evaluation program may be for the purpose of setting wage scales, for determining promotion requirements, for establishing incentives, etc.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0269 Job Family.

“Job family”, means a group of related series of classes of positions such as clerical, personnel, engineering, or education, etc.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0270 Job Rotation.

“Job rotation”, means the procedure of moving workers systematically from their jobs to related jobs as a means of broadening their experience and developing versatility, sometimes called “cross-training”.

History: Rule 10-8 1, eff 29 Jul 81, § 2.0 (part).

4.0271 Job Standard.

“Job standard” means the level of performance of a given job taken as a basis of comparison.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0272 Journeyman.

“Journeyman” means an individual who has served a formal apprenticeship or has gained substantially equivalent experience over a period of years, during which time he has acquired a comprehensive knowledge and high degree of skill in one or more of the recognized trades.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0273 Leave Without Pay.

“Leave without pay” means authorized absence from duty without compensation, exclusive of suspension or absence without leave (AWOL).

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0274 Leave with Pay.

“Leave with pay” means authorized absence from duty with compensation.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0275 Leave Year.

“Leave year” means the period beginning with the first day of the first complete pay period in any calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year,

History: Rule 10-81, Eff 29 Jul 81, § 2.0 (part).

4.0276 Lecture.

“Lecture” means a method of teaching in which the instructor gives an oral presentation of subject matter, with little or no participation by trainees.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0277 Line.

“Line”, in a private or public business organization, means the chain of direct command and operational responsibility, as distinguished from “staff”.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0278 Line Responsibility.

“Line responsibility” means the ultimate responsibility for effective and efficient performance. This responsibility includes the following functions; making executive decisions, planning, supervising, and testing operations, conducting inspections, maintaining discipline, and training of employees.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0279 Management.

“Management” refers to the processes of planning, direction, and control. One managerial function is that of planning, of establishing group or team policies, objectives and programs for the future. A second is organizing the assignment of specialized responsibilities to various departments and levels throughout the entire work team, thus facilitating cooperation and the effective utilization of human and other resources. A third function is usually described as control. Guides and indicators be created to facilitate a continuing check on operations. Through these controls, managers see that what is being done corresponds to objectives and assignments.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0280 Manpower.

“Manpower” means the number of men and women available for productive employment.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0281 Maternity Leave.

“Maternity leave” means 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 the order given.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0282 Medical Certificate.

“Medical certificate” means a written statement; signed by a registered practicing physician or other practitioner; certifying to the incapacitation, examination, treatment, or the period of disability of an employee while he was undergoing professional treatment.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0283 Minimum Qualifications.

“Minimum qualifications” means the training, experience, and other qualifications established for a given class and required of an applicant for admission to the examination for that class.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0284 Mockup.

“Mockup” means a working model, usually natural size, which illustrates the assembly and operation of a mechanical device and assists in understanding the physical principles involved in its operation.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0285 Morale.

“Morale” is not a single concept; rather, it is a shorthand expression covering a number of factors such as recognition, credit, security, sense of belonging, opportunity, etc., that may together produce a particular atmosphere among the employees in an organization. Is closely interrelated with a number of incentives which management uses for the employees.

History: Rule 10-51, eff 29 Jul 81, § 2.0 (part).

4.0286 Motion Study.

“Motion study” means the study of body motions used in performing an operation, with thought toward improving the operation by eliminating unnecessary motions and simplifying the necessary motions, so that maximum efficiency is realized.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0287 Motivation.

“Motivation” is applied to an inner urge that moves a person to action, and also to a contemplated result, the desire for which moves the person.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0288 Noncompetitive Personnel Action.

“Noncompetitive personnel action” means a 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.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0289 Nonstandard workweek.

“Nonstandard workweek” means irregular or indeterminate hours worked by employees, the nature of whose duties commonly or frequently preclude successful job completion in standard workweeks over a prolonged period.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0290 Off-site Training.

“Off-site training” means in-service training given to an employee outside their actual work area; for example, classroom training.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0291 On-the-job Training.

“On-the-job training” means in-service training given to an employee within the work area while doing productive work.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0292 Orientation Training.

“Orientation training”, as part of induction, means in-service training designed to assist workers to adapt themselves as quickly as possible to their job environment, to acquire satisfactory attitudes, and to

become familiar with the organization in which they work.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0293 Out-service Training.

“Out-service training” means training provided by an agency for its employees in order to increase their effectiveness in their present assignments, or to prepare for future assignments, using resources and facilities outside of the jurisdiction of the ASG.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0294 Overtime.

“Overtime” means work performed in excess of 40 hours per week for employees with a regular workweek. Exceptions: For firefighters, it is work in excess of an average of 60 hours per week or 240 hours in 28 days; for hospital employees, it is work performed in excess of 8 hours per day.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0295 Part-time Employment.

“Part-time employment” means work of regularly less than 40 hours per week. However, for certification from registers, work of less than 32 hours per week shall be considered as part time.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0296 Pay Adjustment.

“Pay adjustment” means a change in the rate of compensation due to revision of the salary schedules of ASG or for reasons not covered elsewhere.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0297 Performance Rating.

“Performance rating” means the formal process of evaluating some or all of the individuals who make up the work team and perform the work, in respect to the quality and quantity of the work performed by them. In some cases, it is often called employee merit, service, or efficiency rating.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0298 Performance Standard.

“Performance standard” means the measure of the performance necessary to meet the needs of the operational system.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0299 Periodic Increment Date.

“Periodic increment date” means 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.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0300 Permanent Employee.

“Permanent employee” means an employee appointed in a career service position who has successfully completed a probationary period.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0301 Personnel Management.

“Personnel management” means:

- (A) the utilization of human resources by management for the accomplishment of the objective of the organization;
- (B) the branch of business management concerned with the administration and direction of all of the relations between an organization and its employees including the recruiting of new employees, training, testing, promoting, and supervising employees, etc, as well as the administration of all personnel relations.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0302 Position.

“Position” means a group of duties and responsibilities. A position may be filled or vacant, full time or part time, temporary or permanent. Positions are in the career service or are excepted.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0303 Position Description.

“Position description”, means a written description of each group of duties and responsibilities constituting a position.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0304 Post -Training.

“Post-training” means training given after entering a governmental job. The training given before the entering is called preemployment training.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0305 Pre-assignment Training.

“Pre-assignment training” means in-service training given before an employee is assigned to a specific job.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0306 Preemployment Training.

“Preemployment training” means the training given to employees prior to coming into service.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0307 Preference Eligible.

“Preference eligible” means a U.S. citizen or a U.S. national of American Samoa ancestry who is a veteran as defined in this chapter; a disabled veteran as defined in this chapter; or the unremarried widow of a veteran.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0308 Premium Payment.

“Premium payment” means wage payment over and above the basic salary rate for extraordinary conditions of employment, such as overtime and special tours of duty.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0309 Probationary Period.

“Probationary period” means the trial period of employment following certification and appointment to, or reemployment in, any position in the career service, including promotional positions.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0310 Program.

“Program” means”: (1) a plan or scheme of administrative action designed for the accomplishment of a definite objective which is specific as to time-phasing of the work to be done and the means allocated for its accomplishment; (2) for budget and accounting purposes, a complete plan of work or effort to accomplish a stated objective.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0311 Promotion.

“Promotion” means a change of an employee from a position in one class to a position in a class having a higher salary range.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0312 Public Administration.

“Public administration” means the activities of government to accomplish public goals.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0313 Rating.

“Rating” means the act of classifying according to grade, class, rank, or other unit of measuring or evaluation.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0314 Reassignment.

“Reassignment” means movement of an employee from one position to another position the same class or grade or from one position to another position in a different class at the same grade.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0315 Reduction-in-force.

“Reduction-in-force” means a separation from service because of a lack of funds and/or work and/or reorganization and without cause on the part of the employee.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0316 Reduction in Salary.

“Reduction in salary” means placement of an employee’s salary at a lower step at the same or lower grade as a result of a disciplinary action.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0317 Refresher Training.

“Refresher training” means training for employees who lack up-to-date information, habits, or skills in an occupation in which they have been previously trained.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0318 Register.

“Register”, means a list of eligible names established for employment or reemployment in a class.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0319 Reinstatement.

“Reinstatement” means appointment of an employee who has previously successfully completed his probationary period.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0320 Related Training.

“Related training”, means instruction which is related to the job and provides knowledge and information concerning theoretical and technical aspects of the job, such as properties of materials used, applied science, mathematics, drawing.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0321 Remedial Training.

“Remedial training” means training given to employees for the purpose of correcting specific weaknesses in work performance.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0322 Resignation.

“Resignation” means a voluntary separation from employment.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0323 Resources.

“Resources” is a term often used by management to describe these productive factors: labor, capital, and machinery. It includes personnel who do the work, and funds, equipment, and materials with which to work. The apportionment of available resources is a responsibility of the head of the organization.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0324 Retraining.

“Retraining” means training given an employee to bring him up to date on new developments, techniques, or procedures in his present job.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0325 Reversion.

“Reversion” means voluntary or involuntary movement of an employee during a six-month trial service period to the lower class which he held prior to his last promotion.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0326 Salary Range.

“Salary range” means a sequence of minimum, intervening, and maximum dollar amounts assigned to a specific class.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0327 Screening Committee.

“Screening committee” consists of three ASG or judiciary employees or any combination thereof, who have been appointed by the director to objectively review applications for classes of positions classified at grade 9 and above for which no comprehensive written, oral, or performance examination exists. Members evaluate the experience and training recorded on an application against the minimum qualifications officially established for the class and rank the applicants in the order of best qualified.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0328 Selecting Authority.

“Selecting authority” means 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.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0329 Selective Certification.

“Selective certification” means the certification of eligibles possessing the special qualifications required for a specific position.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0330 Seminar.

“Seminar” means an advanced study group with selected members, each of whom investigates some aspects of a subject and reports thereon to the group, the members of which then discuss and evaluate the findings.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0331 Sick Leave.

“Sick leave” means absence from duty because of illness or other disability or exposure to contagious disease.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0332 Skill Training.

“Skill training” means development of a facile and well-integrated performance, usually associated with mechanical and motor responses, such as those used in typing, glassblowing, and swimming.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0333 Standard Workday.

“Standard workday” means an assigned eight-hour work period.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0334 Standard Workweek.

“Standard workweek” means 40 hours divided into five regular assigned eight-hour days within a seven-day period.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0335 Supervisor.

“Supervisor means any individual having substantial responsibility requiring the exercise of independent judgment who, on behalf of management, regularly participates in the performance of all or most of the following functions over at least three employees: promote, transfer, suspend, discharge or adjudicate grievances of other employees.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0336 Suspension.

“Suspension” means an enforced absence without pay for disciplinary purposes.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0337 Temporary Employment.

“Temporary employment” means 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 months but not exceeding one year.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0338 Termination.

“Termination” means separation from employment for reasons beyond the control of the employee.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0339 Training Aids.

“Training aids”, means any material or device which facilitates learning, such as movies, slides, posters, booklets, viewgraphs, audio-visual aids, etc.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0340 Training Committee.

“Training committee” means a committee authorized to consider training problems and devise solutions, develop training policies, promote their acceptance, and advise management in the execution of those policies.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0341 Training Plan.

“Training plan” means a method or scheme for obtaining a certain specific training objective, and containing the following information:

- (1) Objective of the training;
- (2) Who will be trained;
- (3) Name of instructor;
- (4) Schedule of meetings, etc.;
- (5) Outline of material to be presented;
- (6) A plan for evaluating the effectiveness of the training.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0342 Training Policy.

“Training policy” means a statement defining the objectives and the responsibilities for training, the relation between training staff and other staff and operating officials, and the general procedures for organizing, operating, and evaluating a training program.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0343 Training Timetable.

“Training timetable” means a form which lists the various tasks in a given organization or unit, and shows for each employee the tasks:

- (1) which he can perform adequately;
- (2) in which he is not to be trained during the period under consideration; and

- (3) in which he is to be trained and the time by which this training is to be completed.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0344 Transfer.

“Transfer” means movement of a permanent employee from a position in one agency to a similar position in another agency and shall be subject to whichever provision applies; e.g., promotion, reassignment, or demotion.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0345 Trial Service Period.

“Trial service period” means a six-month trial period of employment of a permanent employee beginning with the effective date of a promotion or demotion.

History: Rule 10-41, eff 29 Jul 81, § 2.0 (part).

4.0346 Tuition.

“Tuition” means payment of appropriated funds to outside agents or agencies for instructional services; the fee charged by an instructor or school for instruction. “Tuition” does not include fees collected for defrayment of other or incidental expenses, such as registration fees, laboratory fees, costs of books, or charge for space or utilities.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0347 Unassembled Examination.

“Unassembled examination” means an examination in which the education, training, and experience of applicants is rated as set forth in their applications.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0348 Veteran.

“Veteran” means 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.

History: Rule 10-81, eff 29 Jul 81, § 2.0 (part).

4.0349 Work Simplification.

“Work simplification” means a management technique for simplifying methods and procedures and eliminating waste of manpower, materials,

equipment, and facilities. Process study, operation study, and layout study are phases of this subject.

History: Rule 10-81 eff 29 Jul 81, § 2.0(part).

TITLE 4 - CHAPTER 03 – RECRUITMENT & PLACEMENT

Sections:

- 4.0301 Requirements Generally-Nepotism-Effective dates.
- 4.0302 Administrative responsibilities
- 4.0303 Competitive-noncompetitive procedures applicability.
- 4.0304 Recruitment-Vacancy Notice-Evaluation announcement.
- 4.0305 Applications.
- 4.0306 Disqualification of refusal to examine applicant.
- 4.0307 Examination-Final rating.
- 4.0308 Veteran preference.
- 4.0309 Registers of eligible applicants.
- 4.0310 Certification of Eligibles.
- 4.0311 Appointment types.
- 4.0312 Reinstatement after separation.
- 4.0313 Promotion-Lateral Movement-Transfer-Detail -Demotion.
- 4.0314 Retired employee reemployment.

4.0301 Requirements Generally-Nepotism-Effective dates.

In filling vacancies within the career service of the ASG, it is the policy that:

- (1) appointments and promotions to all positions shall be made solely on the basis of merit, fitness, length and quality of previous service, and relative skills, knowledge, and ability as shown by examinations;
- (2) the same standards and methods shall be used in evaluating all candidates who are in competition for the same class of work;
- (3) 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:

- (A) The applicant was born in American Samoa;
- (B) One of the parents of the applicant was born in American Samoa;
- (C) The applicant is married to an American Samoan;
- (D) The applicant was legally adopted by an American Samoan;
- (E) The applicant has resided continuously in American Samoa for at least 10 years and has been approved by the immigration board.
Only when no permanent resident can be found who meets the minimum qualifications for employment establish for a particular class of work can another person be employed;
- (4) applicants who have been selected for positions in the career service must successfully pass a preemployment physical, examination before they can be appointed;
- (5) in all recruitment and placement activities, it is the policy of the government that two or more members of a family may be employed within the same office as long as one member does not officially and immediately supervise the other. This requirement not only is applied on the basis of facts as they exist as of the time of appointment but at any time while serving as an employee of the ASG or the Judiciary Branch;
- (6) the official effective date for all recruitment and placement actions, as well as other personnel actions, shall be established by the office of manpower resources 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. The effective date for within-grade step increments is described under 4.0409. Effective dates for appointments can only be established after the prerequisite medical, police, and immigration clearances have been obtained by the department. Retroactive effective dates are only set when an administrative error has occurred or

an appeals action results in retroactive corrective action.

History: Rule 10-81, eff 10-81, eff 29 Jul 81, § 3.1.

4.0302 Administrative Responsibilities.

The director has primary responsibility for establishing and administering procedures for ruling vacancies in compliance with appropriate federal and ASG rules. However, all employees and supervisors share responsibility for the successful operation of the system.

- (a) The director is responsible for:
 - (1) developing a merit system policy and procedural guides for filling positions;
 - (2) providing leadership and support for the merit system as it relates to all segments and activities of the government;
 - (3) assuring that managers and supervisors are aware of the objectives and requirements of this program;
 - (4) assuring that applicants or potential applicants are informed, at least annually, that they may file or refile employment application at the recruitment office.
 - (b) Managers and supervisors are responsible for:
 - (1) providing active support to the objectives of the merit system and fully complying 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 and releasing, within a reasonable time, their subordinate employees selected for promotion, transfer or reassignment;
 - (4) providing firm merit system support to employees and keeping themselves fully informed so as to be able to provide employees with information on the merit system and its 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 recruitment and examination division is responsible for:
- (1) developing and employing the procedures necessary for recruitment, examination, and certification;
 - (2) developing, in cooperation with managers and supervisors, qualification requirements and evaluation methods for specific positions;
 - (3) providing the necessary technical competence required to operate the merit system and publicize its operation;
 - (4) announcing examinations and for position vacancies as appropriate, rating applications establishing and maintaining lists of eligibles and issuing certificates of eligibles to selecting officials;
 - (5) maintaining the required documentation of all personnel actions covered by the plan;
 - (6) assuring that the requirements of the merit system have been met before taking personnel action on a position change.
- (d) Employees are responsible for:
- (1) familiarizing themselves with the provisions of the merit system;
 - (2) personally applying for an announced vacancy in which they are interested and for which they meet qualifications standards, by submitting required, designated application material;
 - (3) demonstrating that they have the skills, abilities and personal 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.

History: Rule 10-81, eff 29 Jul 81, 4 3.2.

4.0303 Competitive-noncompetitive procedures applicability. Vacancies can either be filled competitively or noncompetitively.

- (a) Competitive procedures apply to the following types of actions:
 - (1) Selection of a nongovernment employee to either a permanent or temporary appointment;
 - (2) Promotion of an employee in the career service except under circumstances specified under subsection (b) of this section;
 - (3) Reinstatement of a former ASG 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;
 - (4) Selection of a government employee who is currently on an emergency appointment to a temporary or permanent position;
 - (5) Selection of an employee who is in a nonsupervisory position to a supervisory position;
- (b) Noncompetitive 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 office of manpower resources;
 - (B) career promotion(s) of employees up to the full performance level position in the career ladder;

- (C) 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) Repromotions of employees to positions or grades from which demoted without personal cause or to intermediate grades below the grades from which demoted;
- (4) Conversions to a different pay system without change in duties and responsibilities;
- (5) Reinstatement of a former ASG employee who has completed his probationary period in the career service to the same or similar class that he held previously in the government;
- (6) Transfer of employment from one department to another department. If such transfer also involves promotion, promotion procedures apply.

History: Rule 10-81, eff 29 Jul 81, § 3.3.

4.0304 Recruitment-Vacancy Notice-Evaluation Announcement.

In filling vacancies competitively, all recruitment efforts shall be conducted publicly in a manner which will attract a sufficient number of qualified persons to meet the needs of the career service. Vacancy notice and/or examination announcements shall be advertised and posted publicly. They shall specify title and salary range of the class, information of the duties performed, applicable minimum or desirable qualifications, and type of examination. Open competitive recruitment shall be for at least 15 calendar days except that in the case of great need the director may cut the filing period to 5 days.

History: Rule 10-81;eff 29 Jul 81 § 3.4 .

4.0305 Applications.

All applications shall be on a form prescribed by the office of manpower resources. The applicant's signature shall certify the truth of the stated information. Applications shall remain under acting consideration by OMR for one year from the date received.

- (a) No information shall be solicited or accepted which reveals religions or political affiliations of the applicant. Information regarding the race or ethnic background of applicants shall be solicited only for use in an affirmative action minority employment program.
- (b) Applications filed with the office of manpower resources by the date specified in the vacancy notice or examination announcement will be considered.
- (c) Any person who willfully makes false statements concerning a material matter in any application for employment with the government may be fined in an amount not to exceed \$100, or imprisoned for not more than 6 months, or both.

History: Rule 10-81, eff 29 Jul 81, § 3.5.

4.0306 Disqualification of, Refusal to Examine Applicant.

Accepted standards of personnel practice will be followed in screening applicants.

Recruitment and examination staff may refuse to examine an applicant or, after examination, may disqualify such applicant or remove his name from a register or refuse to certify any person otherwise eligible on a register if:

- (1) he is found to lack any of the requirements established for the class;
- (2) he is so disabled as to be rendered unfit to perform the duties of the class;
- (3) he is addicted to the use of narcotics or the habitual excessive use of intoxicating beverages;
- (4) he has been convicted of any offense that would adversely affect the government and which would be grounds for disqualification from the position for which he is applying;

- (5) he has made a false statement of material fact in his application;
- (6) he has previously been dismissed or requested to resign from private or public service for delinquency, misconduct, inability to do similar work, or any other fitness as an employee;
- (7) he has used, or attempted to use, bribery to secure an advantage in the examination or appointment;
- (8) he has directly or indirectly obtained information regarding examinations to which he was not entitled;
- (9) he has taken part in the compilation, administration, or correction of the examination.

History: Rule 10-81, eff 29 Jul 81, § 3.6.

4.0307 Examination-Final Rating.

The director 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.

- (a) 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 he is competing as well as his general background and related knowledge, and shall be rated objectively. A passing score will be established for each test included in the examination.
- (b) Whenever possible, 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) Examination announcements shall specify the desirable or minimum requirements, the parts of the examination, and the method of rating. Announcements shall be prominently posted by all appropriate agencies to ensure that the information is reasonably available to all.
 - (f) A performance evaluation may be used to construct scores in promotional examinations, provided that the director determines such evaluations are practical and necessary to improve the effectiveness of the examination.
 - (g) Each applicant shall receive notice of final rating. After receipt of the notice of rating, the applicant may request and receive information regarding his score on any part of the examination, or may give written authorization for his supervisor or agency head to obtain the information for him. The same information may, upon request, be furnished to the supervisor or agency head concerning a certified eligible.
- (c) If the selecting authority passes over a preference eligible whose name appears on the certificate of eligibles forwarded to him and selects a nonpreference eligible, he shall file written reason therefor with the director for approval.
 - (d) When 3 or more names of preference eligibles appear on a certificate of eligibles, the selecting official may select only a preference eligible to fill the vacancy under consideration.

History: Rule 10-81, eff 29 Jul 81, § 3.8.

4.0309 Registers of Eligible Applicants.

The following types of registers shall be established and maintained by the office of manpower resources:

- (a) Reduction-in-force Register.
 - (1) Composition: A reduction-in-force register will be prepared for each classification, listing the names of all employees who have permanent status and have been notified 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. The employee's name shall appear; for all classifications in which he held permanent status and where appropriate, the employee's geographic availability will be shown.
 - (2) Method of ranking. This register will be ranked according to seniority; those with the largest period of performance rated 4 or better on their final performance evaluation will be placed at the top of the list, the balance of the names placed in descending order. Those with performance evaluations showing ratings of less than 4 will be placed at the bottom of the list, regardless of years of service
 - (3) Life of register: An eligible's name will normally remain on this register for one year.
 - (4) Certification: Names from this list shall be certified first to the selecting authority

History: Rule 10-81, eff 29 Jul 81, § 3.7.

4.0308 Veteran Preference.

- (a) In open competitive examinations, eligible veterans shall receive preferential consideration as follows:
 - (1) Ten additional points to a disabled veteran. This preference shall be utilized in the open competitive examination only and not in any promotional examination;
 - (2) Five additional points to a veteran or the unremarried widow of a veteran. This preference shall be utilized in open competitive examination only and not in any promotional examination.
- (b) The names of preference eligibles shall be entered upon the appropriate registers ahead of others having the same score.

before those from, any open or promotional register.

(b) Promotional-Register.

- (1) Composition: The promotion register will be established for a specific position in an agency 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 who have received a passing final grade in the promotional examination and are eligible to be certified.
- (2) Method of ranking: This register shall be ranked according to final score from the highest to the lowest.
- (3) Life of register: The life of the promotional register shall be until the position is filled.

(c) Open Competitive Register.

- (1) Composition: The open competitive register will contain the names of all persons who have passed the appropriate examination for each class of work on an open basis.
- (2) Method of ranking: This register shall be ranked by the final score, from highest to lowest.
- (3) Life of register: The life of a register shall be one year or until replaced by a register established through a new examination.
- (4) Eligibles may be removed from the register under the following circumstances:
 - (A) On evidence that the eligible cannot be located by the postal authorities or the village pulenu'u;
 - (B) On receipt of a statement from the eligible declining an appointment and stating position in that class;
 - (C) If 3 offers of a probationary appointment to the class for which the register was established have been declined by the eligible;

(D) If an eligible fails to reply to written inquiry as to availability after 5 days in addition to the time required to receive and return the inquiry;

(E) If an eligible accepts an appointment and fails to present himself for duty at the time and place specified without giving satisfactory reasons for the delay to the appointing authority.

History: Rule 10-81, eff 29 Jul 81, § 3.9.

4.0310 Certification of Eligibles.

Requests for certification of eligibles to a position will be submitted by the selecting authority on form Per-35. Authorized position vacancies can only be filled from the list furnished by the office of manpower resources.

(a) Upon receipt or a request for certification, the director shall cause to be prepared an eligible list consisting of:

- (1) names of eligible applicants from the reduction-in-force list, if any. The selection must be made from this list if one exists;
- (2) names of eligibles from the pertinent open or promotional list. No more than 5 names will be certified, except in case where candidates below the fifth rank have the same numerical score as the person named as number 5, in this instance, additional names will be certified to the extent there are eligibles with that same score.

(b) Reports of actions taken on certified eligibles by the selecting authority shall be given in writing to the director within 10 working days following certification unless the director has specifically granted an extended time. Fair consideration must be given to all certified names. One of the following actions must be taken:

- (1) Appointment of one of the certified candidates;
- (2) Request for additional names to replace names of eligibles who:
 - (A) fail to reply within four 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 director from a written report by the selecting authority.

(3) Cancellation of the request.

History: Rule 10-81, eff 29 Jul 81, § 3.9.

4.0311 Appointment Types.

(a) Career Service Appointments. Career service appointments are always made through open competitive civil service examination procedures to fill permanent, regularly budgeted positions from the open or promotional registers. They always require a probationary period of one-year, satisfactory completion of which is requisite for permanent status in the position.

(b) Temporary Appointments.

(1) When there is work of a temporary nature, at the completion of which the services or an additional employee will not be required, the director may authorize a temporary appointment for a period not in excess of one year.

(2) Such appointment shall be made from a register of eligibles, if eligibles are available. The selection of an eligible from the register shall not affect the retention of the eligibles on the eligible list and he shall continue to be considered for probational appointment, should an appropriate vacancy occur.

(3) Service under a temporary appointment is not creditable for permanent status.

(c) Emergency Appointments.

(1) When an emergency occurs requiring the immediate service of a person or persons, the department head may request that an emergency appointment be made.

(2) Justification for the emergency must be submitted to and approved by the director prior to any personnel action.

(3) An emergency appointment of an American Samoan national may not be made to exceed 30 days unless the appointment is

extended by the director up to a maximum of an additional 30 days, based on agency justification of the continuing state of emergency.

(4) Service under an emergency appointment shall not constitute a part of the employee's probationary period.

(5) If a person other than American Samoan national is to be appointed, immigration clearance must be secured prior to entrance on duty, but police and medical clearances may be furnished during the 30-day emergency period.

(d) Disaster Emergency Appointment. In the case of a disaster, departments are authorized to make direct, emergency appointments without any clearance, for a period not to exceed ten working days.

History: Rule 10-81, eff 29 Jul 81, § 3.11.

4.0312 Reinstatement After Separation.

(a) Any person who has satisfactorily completed a probationary period in the career service and who has separated therefrom may be reinstated to a position with the same or similar duties to those he previously performed, provided his reemployment is not prohibited by rules or laws relating to the reemployment of employees separated for cause or who have abandoned their positions.

(b) Reinstatement to the same class of work or grade previously held is noncompetitive.

History: Rule 10-81, eff 29 Jul 81, § 3.12.

4.0313 Promotion-Lateral Movement-Transfer-Detail-Demotion.

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

(a) Promotion.

(1) No employee shall be certified from a promotional register until he 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 have not completed their original probationary period, if selected, must serve a new probationary period. Employees who are otherwise qualified will be admitted to promotional examinations if they are within 2 months of the experience required by the minimum qualifications and are assigned to a position which provides qualifying experience.

- (2) A permanent employee who is promoted and who fails to satisfactorily complete the probationary period shall be given 15 calendar days written notice no earlier than 90 days after assuming the position. A copy of this notice must be sent to the director, who will notify the employee of the date he will automatically revert to his former classification. If there are no vacancies in that class, he is placed on the reduction-in-force register. 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.
- (3) An employee who is promoted within the same pay schedule shall be given an increase in compensation which is equivalent to 2 salary steps on the grade level of the position from which promoted. If the increase of 2 steps results in a salary rate falling between 2 steps of the new grade, the employee shall be given the higher of the 2 steps.

(b) Lateral Movement.

- (1) Reassignment: movement of a permanent employee from one position to another in the same or another class within the same agency with the prior approval of the director.
- (2) Transfer: movement of a permanent employee from one position to another in the same or another class between agencies with the prior approval of the director. If a transfer includes a promotion, the rules

governing promotion apply. A transfer is always made in connection with a:

- (A) reassignment;
- (B) demotion; or
- (C) promotion.

All lateral movements of personnel must be approved by the director or, in the case of the Judicial Branch, the Chief Justice.

(c) Detail.

- (1) Details are intended only for meeting temporary needs of the agency's or another agency's work program when necessary services cannot be obtained by other more desirable or practical means. Interagency details are particularly appropriate for temporary service in the performance of official government functions such as providing disaster assistance preparation for Flag Day, or election services.
- (2) Detailing employees to other kinds of positions immediately after competitive appointment tends to compromise the competitive principle and so is not permitted. Except for an emergency detail of 30 calendar days or less, an employee may not be detailed for at least 3 months after the initial appointment.
- (3) Agencies are responsible for keeping details within the shortest practicable time limits and for making a continuing effort to secure necessary services through use of appropriate personnel actions.
- (4) Details for 30 calendar days or more shall be reported on form 303 and maintained as a permanent record in official personnel folders. Details of less than 30 calendar days need not be official documented on form 303, but should be recorded in department records.
- (5) All details to higher grade positions will be confined to a maximum period of 120 days unless approved by the director, or in the case of the Judicial Branch, the Chief

Justice. If management fails to initiate a form 303 to terminate the detail at the end of the stated period the office of manpower resources shall initiate the action.

- (6) 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 eligibles on the agency promotional register for the class or for a related class as determined by the director and the agency.
- (7) An employee who accepts a detail for 30 calendar days or more to a higher graded 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.
- (8) An employee shall not achieve permanent status in the position to which he has been detailed and upon termination of the detail shall be returned to his former position.

(d) Demotion.

- (1) Demotion may be disciplinary or nondisciplinary, voluntary or nonvoluntary.
- (2) An employee who is demoted may not receive pay at a higher rate than he received before the demotion.

History: Rule 10-81, eff 29 Jul 81, § 3.13; and Rule 13-84, eff 19 Dec 84, § 1; and Rule 5-87, eff 27 Apr 87, § 1.

4.0314 Retired Employees Reemployment.

An employee who has retired may be reemployed under this chapter but his annuity shall be suspended during the period of his reemployment under this chapter.

History: Rule 10-81, eff 29 Jul 81, § 3.14.

TITLE 4 - CHAPTER 04 – CLASSIFICATION AND PAY

Sections:

- 4.0401 Establishment of system.
- 4.0402 Position descriptions.

- 4.0403 Wage schedule applicability and bases.
- 4.0404 Position classification system.
- 4.0405 Effective date of actions.
- 4.0406 Administrative review.
- 4.0407 Pay schedules.
- 4.0408 Pay schedule placement.
- 4.0409 Step-increment increases for length of service-Pay schedule structure.
- 4.0410 Overtime-Compensatory time.
- 4.0411 Hazard pay.
- 4.0412 Shift differential.
- 4.0413 Special housing/subsistence allowance-Generally.
- 4.0414 Special housing/subsistence allowance-Capital improvement projects.

4.0401 Establishment of System.

In keeping with the American Samoa Code Annotated, the director shall develop and maintain a territory-wide classification and pay system based on objective, consistent, and timely classification of all positions within the Executive and Judicial Branches, of ASG and the legislative reference bureau, and shall apply reasonable and consistent assignment of positions to pay grades so as to compensate employees in equitable relationship to each other and to contribute to the attraction and retention of public employees. The system so established or any portion thereof may be extended to noncivil service positions as required by law or for the good of the service.

History: Rule 10-81, eff 29 Jul 81, § 4.1.

4.0402 Position Descriptions.

- (a) Each agency shall maintain current position descriptions covering each career service and excepted position authorized to the agency. Each supervisor is responsible for reviewing the descriptions once each year for accuracy.
- (b) When duties of positions change, the supervisor must prepare a new position description to reflect the change.
- (c) One copy of each position description shall be furnished to the office of manpower resources.

History: Rule 10-81, eff 29 Jul 81, § 4.2.

4.0403 Wage Schedule Applicability and Bases.

The classification and compensation plan of the territory shall provide for three separate segments:

- (a) The educational schedule, which applies to the department of education/community college classification and compensation plan for teachers, counselors and principals, which is based on “equal pay for equal qualifications”.
- (b) The general schedule (GS), which applies to the balance of the “white collar” positions and which is based on “equal pay for substantially equal work”.
- (c) The wage grade schedule (WG) which applies to all “blue collar” jobs and which is also based on “equal pay for substantially equal work”.

History: Rule 10-81, eff 29 Jul 81, § 4.3

4.0404 Position Classification System.

The director shall develop and maintain a position classification system which shall provide for the placement of each position into an appropriate class. This includes:

- (1) the establishment of written class specifications which describe each of the various classes within the classification plan in terms of the nature, variety, and level of duties and responsibilities, and the minimum qualifications required to perform adequately;
- (2) the establishment, revision, or abolition of classes in order to maintain the plan on a current basis;
- (3) the establishment of official class titles;
- (4) the changing of any position from one class to another class whenever warranted by significant change in position duties and responsibilities or class definition, or to correct an error;
- (5) the auditing of positions in order to ascertain that current positions are correctly classified.

History: Rule 10-81, eff 29 Jul 81. § 4.4.

4.0405 Effective Date of Actions.

- (a) The effective date of an initial classification action shall be the date action is officially taken

by the office of manpower resources to classify the position.

- (b) The effective date of any subsequent classification action shall be the beginning of the pay period immediately following the date of notice of action, except that the date may be adjusted by the director in the event an incumbent fails to meet the qualification of the class, for budgetary reasons, or for other good cause.
- (c) The effective date of a classification action when a classification and/or compensation survey is initiated by the director shall be the date action is officially taken, or such other date as the director deems practicable.

History: Rule 10-81, eff 29 Jul 81, § 4.5.

4.0406 Administrative Review.

An administrative review may be requested by an employee or his designated representative or by the department head within 20 days after the effective date of the classification or reclassification action.

- (a) The request for administrative review must be in writing and shall contain the specific reason(s) for disagreement with the classification action of the director, and shall state the action requested and the reason the requested action is deemed more appropriate.
- (b) A request for administrative review must be received no later than 10 days of the date the notice of classification is sent to the department.
- (c) The director shall take appropriate action to review the classification and shall notify the department of the final decision.

History: Rule 10-81, eff 29 Jul 81, § 4.6.

4.0407 Pay Schedules.

History: Repealed in its entirety. Rule 001-2021; eff 1 July 21.

4.0408 Pay Schedule Placement.

- (a) Initial Appointment.
 - (1) All initial appointments shall be made at the first step of the appropriate pay range of each of the 3 salary schedules except that,

in the event that recruitment of an employee is not practicable at the first step, the director may, after appropriate notice and advertising, recruit at any step within the pay range which will attract qualified candidates.

- (2) Requests for payment above the minimum may be made by agency heads prior to or at the time of appointment but in any event must be made no later than 60 days after the appointment date. Requests received after date of appointment, if granted, will not be granted retroactively.
- (b) Reassignment. An employee who is reassigned shall receive the same rate of compensation as he presently receives, except that in case of a reassignment from 1 salary schedule to another salary schedule, the pay rules governing initial appointment shall apply.
- (c) Reinstatement.
 - (1) When an employee is reinstated within a year of his separation from government service, he may be paid at any rate within the pay range which does not exceed his highest previous rate of pay, provided that where such rate falls between 2 steps of the grade to which reinstated, he may be paid at the higher step.
 - (2) The rules governing initial appointment shall apply only when an employee eligible for reinstatement has been separated for at least 1 year from government service.
- (d) Returning Veteran. An employee who meets the requirements for reemployment as specified in the Veteran's Preference Act of 1944, as amended, and who is reemployed in his former position, shall have his rate of pay set at the step he would have received had his service with the government continued. If reemployed in a different position, the pay rule governing initial appointment shall apply.

History: Rule 10-81, eff 29 Jul 81, § 4.8.

4.0409 Step-Increment Increases for Length of Service-Pay Schedule Structure.

- (a) Every employee is entitled to an annual step-increment increase at the beginning of the pay period immediately following his service year preceding such increase.
- (b) A service year is 52 weeks of continuous service in present grade and step, which shall include credit for leave without pay:
 - (1) To pursue a course of instruction approved by the director which is related to the employee's area of work;
 - (2) To recuperate from an injury for which workers' compensation weekly payments are made;
 - (3) For military service when so provided by territorial or federal law; and
 - (4) For any other authorized purpose but for no more than 10 workdays.
- (c) The compensation of an employee denied an increment because of substandard performance in his job in the service year preceding may subsequently be increased as of the date his performance has been brought up to standard and has so continued for a 3-month period. His increment anniversary date will be adjusted accordingly.
- (d) Ninety days prior, to each employee's step-increment due date, a notice will be sent to the employee, his department head, and immediate supervisor. This notice will call for the submission of an annual employee performance evaluation, which must be completed and returned to the office of manpower resources.
 - (1) If the performance evaluation is satisfactory or better, the employee will receive a step increment.
 - (2) If the performance evaluation is unsatisfactory, a written justification on same must be submitted to manpower resources 60 days prior to the date the increment is due. If the justification is approved, the computer center will be notified not to effect the increment.

(3) If no performance evaluation is received, no increment will be processed.

(e) When the date of promotion and the periodic step-increment date coincide, the periodic increment shall be made prior to the promotional increase.

History: Rule 10-81, eff 29 Jul 81, § 4.9; and Rule 4-84, eff 30 Apr 84. § 1.

4.0410 Overtime-Compensatory Time.

(a) Applicability. This section applies to all career service employees and certain contract employees whose contracts permit overtime or compensatory time, with the following exceptions:

- (1) Department of education and community college;
- (2) Employees in second or third jobs.

(b) General Provisions.

- (1) Every employee is entitled to receive cash pay or time off in lieu of cash for overtime work, as provided in this section.
- (2) Each workweek shall stand-alone; “averaging” of hours over 2 or more weeks is not permitted. This paragraph does not apply to firefighters.
- (3) Workweeks shall be 40 hours in a fixed and regularly recurring period of 168 hours, in 7 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 any employee’s workweek is established, it shall remain fixed until changed. A change intended or designed to evade the overtime requirement is prohibited.
- (4) Overtime compensation policies shall not be waived by any agreement between a government supervisor and an employee.

(c) Cash Pay for Overtime. Employees in grades GS 1-11 and WB 1-16 are eligible to be compensated in cash for overtime at the rate of 1 1/2 times their regular rate of pay for all hours worked in excess of 8 per day or 40 per week.

Firefighters shall receive overtime cash pay for hours worked in excess of 40 per week. The agency director may authorize compensatory leave in lieu of cash upon mutual agreement with the employee. This leave will be authorized at the rate of 1 1/2 hours of leave per overtime hour worked.

(d) Higher Grades. Employees in grades GS 12 and WB 17 or above, or whose grade is XX, are not eligible for cash pay for overtime work.

They be compensated for work beyond 8 hours per day or 40 hours per week on an hour-for-hour basis.

(e) Hours Worked. “Hours worked”, in general, includes all the time an employee is required to be on duty or on the government premises or at a prescribed workplace and all time during which he is “suffered or permitted to work”.

(f) Training and Meetings. Attendance at lectures, meetings, training programs, and similar activities will not be counted as hours worked beyond the scheduled workday or workweek. If attendance is outside the employee’s regular working hours and is required by the agency director, overtime or compensatory time may be awarded if otherwise applicable.

(g) Semiannual Payoff. Compensatory time earned should be taken, within 60 days of the pay period in which it was earned. Departments are responsible for monitoring the accumulation of compensatory time. Any balance of compensatory time in excess of 120 hours will be paid, to the employee at his regular time rate during the last pay period of June and December of each year.

(h) Separation. Employees leaving ASG employment shall be compensated in cash for accumulated, documented overtime by the agency from which separated.

(1) In the event of death of an employee, his accumulated overtime shall be paid to appropriate persons provided by this title.

(2) If a function or program, together with assigned employees, is transferred from one

to another agency, all accumulated overtime shall also be transferred.

- (i) Records. Each agency is responsible for keeping appropriate records of hours worked and leave earned, used, accrued, etc. of its employees.
- (j) Student Workers. Whenever it is necessary to employ student workers as learners at wages lower than the minimum wage to prevent curtailment of opportunities for employment in a specified institution, such as a community college or whenever a “student learner” is employed at wages lower than the minimum, an application for a special certificate authorizing the employment of such student workers as learners at subminimum wage rates may be filed through the office of manpower resources to the U.S. Department of Labor. Without such certificate the minimum wage must be paid.

History: Rule 10-81, eff 29 Jul 81, § 4.10.

4.0411 Hazard Pay.

- (a) It is recognized that some positions at times involved intrinsically hazardous working conditions, justifying “hazard pay”. “Hazard pay” is pay additional to the normal hourly pay for the position, payable to employees while actually engaged in the hazardous activities. Upon the recommendation of a department head, the director may grant hazard pay differentials to employees who are temporarily exposed to unusually hazardous working conditions and where the following conditions are met:
 - (1) The exposure of unusually hazardous working conditions is temporary;
 - (2) The degree of hazard is severe, or most severe.
- (b) Hazard pay has been authorized as follows:
 - (1) Divers diving in depths not exceeding 39 feet, \$2 per hour of diving time;
 - (2) Divers diving in depths of more than 39 feet but not exceeding 59 feet, \$3 per hour of diving time;
 - (3) Divers diving at depths of more than 59 feet, \$5 per hour of diving time;

- (4) Utility linemen working on utility poles 45 feet high or higher, \$0.50 per hour of time on such poles;
- (5) Utility linemen working “hot” lines, regardless of height, \$0.75 per hour of time on “hot” lines;
- (6) Utility linemen are entitled to receive pay for both high-pole and “hot” line work for each hour of work under such conditions;
- (7) All personnel assigned to duty at sea outside the harbor entrance, \$0.15 per hour of time of duty at sea outside the harbor entrance;
- (8) Employees required to work in underground sewers, clean water storage tanks, reservoirs, climb or scale heights in excess of 20 feet, install or repair mains, valves, etc. while wet from water other than natural causes, \$0.50 per hour of time engaged in such activities;
- (9) In computing hours spent at work calling for “hazard pay”, fractional hours shall accrue in quarter-hour segments.

History: Rule 10-81, eff 29 Jul 81, § 4.11; and Rule 13-84, eff 19 Dec 84, § 2.

4.0412 Shift Differential.

- (a) Each department which has responsibilities requiring work around the clock will set up 3 shifts; the normal morning to afternoon is known as the “day shift”; the shift beginning in the afternoon into the evening is known as the “swing shift”; and the late night to morning shift being known as the “graveyard shift”.
- (b) Employees regularly scheduled to the “swing shift” receive an additional \$0.15 per hour for each hour of work on that shift.
- (c) Employees regularly scheduled to the “graveyard shift” receive an additional \$0.25 per hour for each hour worked on that shift

History: Rule 10-81, eff 29 Jul 81, § 4.12, and Rule 10-82, eff 29 Nov. 82, § 3(1).

4.0413 Special Housing/Subsistence Allowance-Generally.

- (a) Any government employee whose permanent duty station is outside of and who is assigned temporarily, to a permanently established position in either the Manu’a Islands or Swains Island will receive a housing/subsistence allowance of \$200 per month if government housing is not available or \$100 per month if government housing is available, payable on a daily pro rata basis.
- (b) Any government employee whose permanent duty station is outside of and who is assigned temporarily to a permanently established position in the Islands of Tutuila and Aunu’u will receive a housing/subsistence allowance of \$150 per month if government housing is not available, or \$75 per month if government housing is available payable on a daily pro rata basis.

History: Rule 1-82, eff 8 Mar 82, § 2, and Rule 11-48, eff 6 Oct 88, § 1.

4.0414 Special Housing/Subsistence Allowance-Capital Improvement Projects.

Any government employee whose permanent duty station is outside of and who is assigned temporarily to perform actual construction duties in connection with a capital improvement project carried on directly by the Department of Public Works in the Manu’a Islands or Swains Island will receive a housing/subsistence allowance of \$100 per week, payable on daily pro rata basis.

History: Rule 11-48, eff 6 Oct 88. § 2.

TITLE 4 - CHAPTER 05 – HOURS, LEAVES AND ABSENCES

Sections:

- 4.0501 Purpose.
- 4.0502 Administrative Responsibilities.
- 4.0503 Holidays-Designated-Proclamation.
- 4.0504 Holidays-Day Observed.
- 4.0505 Annual Leave-Charges to Leave.
- 4.0506 Sick Leave.
- 4.0507 Leave Without Pay.
- 4.0508 Political Leave.

- 4.0509 Maternity Leave.
- 4.0510 Military Leave.
- 4.0511 Excused Absence.
- 4.0512 Repealed.
- 4.0513 Unauthorized Absence.
- 4.0514 Repealed.

4.0501 Purpose.

It is recognized 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 to meet personal and family needs. It is also considered essential to the maintenance of a stable, satisfied, and productive workforce for employees to be compensated to a reasonable extent during periods of involuntary absence from duty due to physical incapacity. Deserving employees, whose retention is of demonstrated value, should be guaranteed job security when it is necessary for them to be in a nonduty status, based on legitimate reasons, for periods longer than permitted under rules governing authorized absence with pay.

History: Rule 10-81, eff 29 Jul 81, § 5.1.

4.0502 Administrative Responsibilities.

- (a) The department of administrative services is responsible for the maintenance of employee leave records and furnishing advice relative to all leave records matters.
- (b) The office of manpower resources is responsible for all policy matters pertaining to leave and absence from duty.
- (c) Agency heads and supervisors are responsible for day-to-day administration of the leave policy.

History: Rule 10-81, eff 29 Jul 81, § 5.2.

4.0503 Holidays-Designated-Proclamation.

- (a) The following public holidays are designated by statute and are paid holidays for government employees:
 - (1) New Year’s Day, 1 Jan;
 - (2) Washington’s Birthday, 3rd Monday in February;
 - (3) Good Friday, Friday before Easter;

- (4) Flag Day, 17 Apr;
- (5) Memorial Day, Last Monday in May;
- (6) Independence Day, 4 Jul;
- (7) Labor Day, 1st Monday in September;
- (8) Columbus Day, 2nd Monday in October;
- (9) Veteran’s Day, 4th Monday in October;
- (10) Thanksgiving Day, 4th Thursday in November;
- (11) Christmas Day, 25 Dec.

(b) Other holidays may be established by Governor’s proclamation.

History: Rule 10-81, eff 29 Jul 81, § 5.3.

4.0504 Holidays-Day Observed.

Holidays shall be observed as provided below:

- (a) For employees with workdays of Monday through Friday, if a holiday falls on:
 - (1) Saturday it is observed on the Friday preceding the holiday;
 - (2) Sunday it is observed on the Monday following the holiday;
 - (3) workday it is observed on that workday.
- (b) For employees with workdays other than Monday through Friday, if a holiday falls on a:
 - (1) day off it is observed on the first workday after the day off;
 - (2) workday it is observed on that workday.

History: Rule 10-81, eff 29 Jul 81, § 5.4.

4.0505 Annual Leave-Charges to Leave.

- (a) Accrual. To earn leave an employee must be employed during a full biweekly pay period. He is considered to have been employed for a full pay period if he is in a pay status of an agency on all days falling within the pay period exclusive of holidays and non-workdays.
- (b) Earning Rates.
 - (1) Full-time employees:

- (A) Employees with less than 3 years of creditable service earn 4 hours or workday of annual leave for each biweekly pay period.
- (B) Employees with 3 but less than 15 years of creditable service earn 6 hours or workday of annual leave for each full biweekly pay period except for the last full pay period of the calendar year, for which they earn 10 hours of annual leave.
- (C) Employees with 15 or more years of service earn 8 hours or 1 workday of annual leave for each full biweekly pay period.

(2) Part-time employees:

- (A) Employees with less than 3 years of creditable service earn 1 hour of annual leave for each 20 hours in a pay status.
- (B) Employees with 3 but less than 15 years of creditable service earn 1 hour of annual leave for each 13 hours in a pay status.
- (C) Employees with 15 or more years of creditable service earn 1 hour of annual leave for each 10 hours in a pay status.

(3) 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 amount of pro-rated leave credit:

Biweekly Pay Period	Hourly Accrual Rate			
	Workdays	Category 4 *	Category 6	Category 8
1	1	1	1	1
2	1	1	1	2
3	1	2	2	2
4	2	2	2	3
5	2	3	3	4
6	2	4	4	5
7	3	4	4	6
8	3	5	5	6
9	3	5	5	7
10	4	6	6	8

* This column may be applied for sick leave purpose.

- (c) **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.

Excess leave beyond the 60 days is forfeited except as follows:

- (1) Nothing in this section shall be construed to prohibit the taking or require the forfeiture of any annual leave which is validly granted and the taking of which begins on or before the last working day of the current leave year, notwithstanding that the recording of the current accrued annual leave for the current leave year on the last day thereof might result in an accumulation of more than 60 days including the working days of the annual leave so granted and then being taken. The period of such annual leave shall be regarded as if it had been entirely taken prior to the last day of such leave year.
- (2) Nothing in this section shall be construed to require the forfeiture of any annual leave when employee terminates on or before the last working day of the leave year, notwithstanding the fact that the recording of current accrued annual leave for such year on the last day may result in an accumulation of more than 60 days.

- (d) **Leave Charges.**

- (1) **Leave days:** Both annual and sick leave are charged to an employee's account only for absence on regular workdays; i.e., days on which he would otherwise work and receive pay during his regular tour of duty. Leave is not charged for absence on holidays or other nonwork days.
- (2) **Minimum charge:** One hour is the minimum charge for either annual or sick leave. After 1 hour, additional charges may be made in multiples of 1/2 hour. Absence on separate days are not combined.

- (e) **When Taken.**

- (1) Annual leave is provided and used for 2 general purposes, which are:

(A) to allow every employee an annual vacation period of extended leave for rest and recreation; and

(B) to provide periods of time off for personal and emergency purposes. These absences involve such matters as death in a family, religious observances, attendance at conferences or conventions, securing a driver's permit, or other personal business which can be disposed of only during the time in which the employee would ordinarily be working.

(2) Annual leave provided by law is a benefit and accrues automatically. However, each department is responsible for administering the annual leave system for their employees and must issue instructions concerning the granting of annual leave. Guidelines for each department are as follows:

(A) The approval of short periods of leave should generally be the responsibility of immediate supervisors, who best know whether the leave requested is compatible with his workload.

(B) Requests for extensive periods of annual leave may be recommended for approval by the immediate supervisors but should generally require approval at a higher organizational level.

(C) Decisions as to the granting of leave will generally be made in the light of the needs of the service rather than solely upon the desires of the employee.

(D) Supervisors should ensure that annual leave is scheduled for use so as to prevent any unintended loss of leave at the end of the leave year.

(E) Annual leave must be requested and approved prior to its taking. Failure to secure prior approval may result in a charge to leave without pay and may result in disciplinary action against the offending employee.

- (f) In lieu of Sick Leave. Approved absence, otherwise chargeable to sick leave, may be charged to annual leave when sickness exceeds accumulated sick leave hours.
 - (g) Advances. It is not permissible for an employee to be granted annual leave in advance of its having been earned.
 - (h) Lump-sum Payments.
 - (1) Entitlement: An employee who has annual leave to his credit and who is separated from his employment with the ASG 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 he would have received had he remained in the employ of the ASG 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.
- History: Rule 10-81, eff 29 Jul 81, § 5.5.*

4.0506 Sick Leave.

Sick leave is for use when an employee is physically incapacitated to do his job, or for such related reasons as exposure to a contagious disease that would endanger the health of coworkers, presence of contagious disease in an employee's immediate family which requires his personal care, or for dental, optical, or medical examination or treatment.

- (a) Earning Rates.
 - (1) Full-time employees: Employees earn sick leave at the rate of 4 hours or 1/2 workday for each full biweekly pay period. Sick leave is earned from the first pay period of employment.
 - (2) Part-time employees. These employees earn sick leave at the rate described under the
- category 4 column of the Pro Rata Table codified in 4.0505(b)(3).
 - (b) Maximum Accumulation. Unused sick leave is accumulated without limit.
 - (c) Granting. Sick leave is a right, provided the requirements of this subsection are met. Government officials have the authority and responsibility to determine that the nature of the employee's illness was such as to incapacitate him for his 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 3 consecutive workdays. However, management may require that the employee furnish such 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.
 - (d) Advances. An employee may draw upon anticipated sick leave credits if current credits become exhausted. The request shall be made to the director, Office of Manpower Resources, through the agency head, within these requirements and limitations:
 - (1) The advance will be made based upon anticipated accrual of credits up to 30 leave days. If the employee has a planned termination date which will affect the accrual, the number of days which can be advanced will be reduced accordingly.
 - (2) The advance, will not be authorized automatically. The following factors will be considered prior to approval:
 - (A) Has the employee been wise and careful in their use of leave in the past?
 - (B) Does the doctor show the employee will be able to return to work in a reasonable time?

- (C) Are the best interests of the government and the employee served through this action?
 - (D) What are the special circumstances which warrant continuing this person's pay on the chance they will return to work and earn the sick leave credit? Length of service, performance record, essential nature of services, and circumstances beyond their control should be cited. (Pregnancy cases do not generally qualify.)
- (A) Improved work performance and ability;
 - (B) Protection or improvement of employee's health;
 - (C) Retention of a desirable employee; and
 - (D) Furtherance of a program of interest to the government.
- (b) Extended Leave Without Pay. Extended leave without pay requires the prior approval of the director as the Governor's representative or, in the case of the Judicial Branch, the Chief Justice, when properly justified by the department submitting such request. Extended leave without pay will be granted in the following circumstances:

History: Rule 10-81, eff 29 Jul 81, § 5.6.

4.0507 Leave Without Pay.

Leave without pay is a temporary absence from duty in nonpay status granted upon the employee's request and at the discretion of management. The permissive nature of leave without pay distinguishes it from absence without leave (AWOL), which is a nonpay status resulting from a period of absence for which the employee did not obtain advance authorization or for which his request for leave has been denied. It shall be the practice of the ASG to grant leave without pay only when it will be of mutual benefit and interest to the government and to the employee. Leave without pay shall not be granted for the purpose of an employee participating in private employment.

- (a) Administrative Discretion. The granting of leave without pay is a matter of administrative discretion. Employees cannot demand that they be granted leave without pay as a matter of right.
 - (1) Government departments must assure that each such request is of such value to the government or the serious needs of the employee as to offset costs and administrative inconveniences of the position of the employee being frozen and remaining vacant while the employee is on leave without pay.
 - (2) Extended leave without pay beyond 30 days may not be approved unless there is assurance that the employee will return to duty and that at least I of the following benefits will result:
 - (1) Attendance at a recognized institution of higher learning or a technical school, pursuing a course of instruction which is related to the employee's field of work;
 - (2) Travel and/or research which will impart knowledge, skills, and/or abilities required in the employee's work;
 - (3) Extended illness with a positive prognosis, or family or personal problems, an end of which can reasonably be predicted;
 - (4) To work for another government on a loan basis, where there is no agreement under the Inter-governmental Personnel Act. The request for the services of the employee must be made through the Governor's office, in writing;
 - (5) To serve a required period of military service beyond the 15 days which are authorized for pay purposes. The military duty must be for periods of time not to exceed 1 year and must be categorically mandated, as in the basic training period required for a recruit in the Armed Forces reserves. Leave cannot be granted for voluntary extensions or reenlistments;
 - (6) To protect employee status and benefits when an employee is injured and his case is

being adjudicated or he is receiving benefits under worker's compensation.

History: Rule 10-81, eff 29 Jul 81, § 5.7.

4.0508 Political Leave.

Leave without pay shall be freely granted to any government 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.

History: Rule 10-81, eff 29 Jul 81, § 5.8.

4.0509 Maternity Leave.

Maternity leave, a period of approved absence for incapacitation related to pregnancy and confinement, is chargeable to sick leave or any combination of sick leave, annual leave, and leave without pay in the order given.

- (a) Employees are required to request maternity leave substantially in advance of their intended absence so that staffing adjustments may be made.
- (b) Periods of maternity leave shall be based on individual medical determination. A medical certification must be submitted showing expected date of confinement. Maternity leave maybe granted for a period of six weeks prior and six weeks subsequent to birth.

History: Rule 10-81, eff 29 Jul 81, § 5.9.

4.0510 Military Leave.

(a) General Provisions. A full-time employee who serves under an appointment without time limitation and who is a member of a reserve component of the Armed Forces of the United States, the U.S. Public Health Service, or the National Guard is entitled to leave of absence for annual military training without charge to annual leave, or loss of pay or service credit, for not more than 15 workdays 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, etc. The National Guard includes the National Guard of the Army and of the Air Force. Application for military

leave shall be accompanied by appropriate military orders.

- (b) Maximum. Military leave is limited to a maximum of 15 workdays during each year, regardless of number of training periods in a year and whether taken intermittently, a day at a time, or all at 1 time.
- (c) 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.
- (d) Contract Employees. Contract employees who are members of the Armed Forces reserve components shall be granted military leave in accordance with the provisions of this section.

History: Rule 10-81, eff 29 Jul 81, § 5.30.

4.0511 Excused Absence.

- (a) Excused absence is absence from duty, duly authorized by the employee's agency director, without charge to annual leave or loss of pay or Service credit, under the circumstances described below:
 - (1) To take an employment examination for a position currently occupied or 1 to which the employee may be promoted or reassigned, not to exceed 3 hours:
 - (2) To take a physical examination required to determine continued employability:
 - (3) To 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) To be unavoidably or necessarily absent from duty for less than 1 hour or for being tardy:
 - (5) To donate blood to the American Red Cross in American Samoa or in emergencies to individuals from the time necessary for such donations not to exceed 4 hours, provided that the employee does not receive pay for blood:

- (6) To participate in emergency rescue or protective work at the request of local or territorial officials:
- (7) To participate in federally recognized civil defense programs for a reasonable length of time up to 40 hours in a calendar year:
- (8) To vote and register. An employee who desires to vote or register in an election or in a referendum on a civic matter in his community may be granted time off without loss in pay or service credit or charge to leave as follows:
 - (A) The employee may be allowed 2 hours of excused absence at the beginning or end of the workday.
 - (B) An employee may be excused for such additional time as may be needed to enable him to vote, depending upon the circumstances in his individual case, but not to exceed a full day. Time off in excess of 1 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-workday and the place of registration is within reasonable 1-day, round-trip travel distance of the employee's place of residence;
- (9) To serve as witness or juror when summoned involuntarily by the court, provided he returns to duty immediately upon release by the court. However, if the employee's appearance in court is in his own interest, either as appellant, defendant, or witness, leave of absence with pay, without pay, or compensatory time off must be documented. An employee called as a court witness in his official capacity, whether on behalf of the government or of a private party, is in an official-duty status;

- (10) When working conditions or extenuating circumstances exist beyond the control of management, not to exceed a maximum grant of 4 hours. Excused absence in this category should normally not exceed 4 hours. However, it may be extended for the duration of the conditions or circumstances such as when inclement weather prevents reporting to work.

History: Rule 10-81, eff 29 Jul 81, § 5.11; and Rule 5-87, eff 27 Apr 87, § 2.

4.0512 Administrative Leave.

Repealed by Rule 5-87, § 3.

4.0513 Unauthorized Absence.

Unauthorized absence shall be treated as absence without pay and may be grounds for disciplinary action.

History: Rule 10-4 eff 29 Jul 81, § 5.13.

4.0514 Workers' Compensation Recipients.

- (a) Earning of Credits. An officer or employee who is absent from work because of injuries/illnesses incurred within the scope of his employment and who is receiving workers' compensation wage-loss replacement benefits, such as temporary total disability and temporary partial disability payments, shall continue to earn vacation and sick leave credits as though he was not absent but performing the duties of his regular employment.
- (b) Use of Credits.
 - (1) An employee with accrued sick leave credits who is absent from work and who is receiving workers' compensation wage loss replacement benefits shall be entitled to receive an additional amount, charged to sick leave, which would bring his total payment to a sum equal to the employee's regular salary.
 - (2) In the event the employee does not have any accrued sick leave credits, he may elect to use accrued annual leave credits to bring his total payment to a sum equal to the employee's regular salary.

- (3) An employee is entitled to use the sick and annual leave credits earned during the period of absence from work.

History: Rule 10-81, eff 29 Jul 81, § 5.14.

TITLE 4 - CHAPTER 06 – INCENTIVE AND TENURE AWARDS

Sections:

- 4.0601 Purpose of Incentive Awards.
- 4.0602 Budgeting-Incentive Awards Committee-Award-Approval Authority.
- 4.0603 Suggestions Award.
- 4.0604 Superior Performance Award.
- 4.0605 Special Act or Service Award.
- 4.0606 Group Award.
- 4.0607 Tenure Award.

4.0601 Purpose of Incentive Awards.

It is the policy of ASG to provide a method which affords recognition of exceptional skills, resourcefulness, or exceptional acts of employees. The purpose of the incentive awards program therefore, is to provide a device by which recognition may be afforded an employee or a group of employees who make suggestions which, when adopted, will save time and/or materials for the government, thus reducing costs, and to provide recognition of employees who perform special acts or services in the public interest which reflect favorably on the image and reputation of the ASG.

History: Rule 10-81, eff 29 Jul 81, § 6.1.

4.0602 Budgeting-Incentive Awards Committee-Award-Approval Authority.

- (a) It is the responsibility of the director of the planning and budget office to budget annually a specified fund for payments of cash awards under the program.
- (b) It is the responsibility of a representative committee, known as the incentive awards committee and consisting of at least 3 but not more than 5 members appointed by the Governor, to serve on a rotating basis to:
 - (1) investigate and evaluate contributions for improving government program operations, as well as other incentive award proposals,

and to recommend their approval or disapproval to higher authority on the basis of a simple majority opinion;

- (2) encourage supervisors and their subordinates to participate in improving the efficiency and economy of government operations.
- (c) It is the responsibility of the chairman of the incentive awards committee, who is a member of the office manpower resources staff, to:
 - (1) receive and review proposals and nominations for clarity and merit, prior to acceptance by the incentive awards committee for evaluation and subsequent authorized action:
 - (2) develop ways and means of stimulating interest and participation in the incentive awards program on the part of both employees and management.
- (d) Authority for final approval of all cash awards shall rest with the Governor, provided the director, office of planning and budget, certifies that funds are available for payment of awards. The Governor may delegate this authority to a key member of his immediate staff.

History: Rule 10-81, eff 29 Jul 81, § 6.2.

4.0603 Suggestions Award.

An employee is eligible to be considered for a cash award by presenting to the chairman of the incentive awards committee, in writing, his suggestion for improvement of government operations.

History: Rule 10-81, eff 29 Jul 81, § 6.3(a).

4.0604 Superior Performance Award.

A cash award may be made when a career service employee's or contract specialist's performance over a 6-month period substantially surpasses the normal requirements of his position or he performs a special assignment in above average manner without adversely affecting his regular work, provided he is nominated in writing, within 6 months of the period of performance in question, by an appropriate supervisor, and such nomination is endorsed and submitted to the chairman of the incentive awards committee by the head or the employee's department.

History: Rule 10-81, eff 29 Jul 81, § 6.3(b).

4.0605 Special Act or Service Award.

A special act or service may be contributed during an emergency, in connection with a special program or activity, or by creative efforts important to administration, science, or research and characterized as a nonrecurring situation; Any employee is eligible to be considered for a special act or service cash award, provided he meets the criteria described in this section and he is nominated not more than 6 months after the completion or the special act or services concerned, in writing, and such nomination is endorsed and submitted to the chairman of the incentive awards committee by the head of the employee’s department.

History: Rule 10-81, eff 29 Jul 81, § 6.3(c).

4.0606 Group Awards.

When a contribution has been made by more than one employee or by a group or employees, all who have contributed, including supervisors, may share equally or proportionately in the group cash award however, the total amount of the award is as if made to an individual. Where individual, shares of such group cash awards appear inappropriate, the incentive awards committee shall determine the amount of the award.

History: Rule 10-81, eff 29 Jul 81, § 6.3(d).

4.0607 Tenure Award.

Effective on and after 6 Jan 80, employees who are awarded service certificates will also receive a tenure award in cash as follows:

- (1) Twenty-year certificate, \$500;
- (2) Thirty-year certificate, \$750;
- (3) Forty-year certificate, \$1,000;
- (4) Retirement certificate, \$100.

History: Rule 10-81, eff 29 Jul 81, § 6.3(e); and Rule 10-82, eff 29 Nov 82, § 3(2).

TITLE 4 - CHAPTER 07 – CONDUCT

Sections:

- 4.0701 Responsibility and deportment-Off-the-job conduct.
- 4.0702 Misconduct.
- 4.0703 Subordination to authority.
- 4.0704 Selling or soliciting.
- 4.0705 Outside business activity.
- 4.0706 Community and professional activities.
- 4.0707 Government property.
- 4.0708 Gifts.
- 4.0709 Information.
- 4.0710 Revolutionary organizations.
- 4.0711 Political affiliation.
- 4.0712 Political activity.
- 4.0713 Financial responsibility.
- 4.0714 Contracts with employees.
- 4.0715 Financial interests.
- 4.0716 Prompt filing of proper federal and territorial tax returns-Prompt payment of taxes due.

4.0701 Responsibility and Deportment-Off-The-Job Conduct.

It is the policy of the ASG to urge its career service employees and contract specialists to cultivate those personal qualities which characterize a good employee’s loyalty to the United States Government and the ASG: a sense of responsibility for the public trust and a standard of personal deportment which is a credit to the individual himself and to the service. Off-the-job conduct is of concern to the government if it reflects adversely upon the dignity, integrity, and prestige of the governmental service.

History: Rule 10-81, eff 29 Jul 81, § 7.1.

4.0702 Misconduct.

Any criminal, dishonest, immoral, or any other conduct on the part of an employee which would adversely affect the government will be cause for his removal from employment. Gambling or the use of alcoholic beverages by employees in public buildings, construction sites, or offices administered by the government will not be tolerated.

History: Rule 10-81, eff 29 Jul 81, § 7.2(a).

4.0703 Subordination to Authority.

An employee is required to carry out the announced policies and programs of the ASG. While policies related to his work are under consideration, he may—and is expected to express his opinions and points of view, but once a decision has been rendered by those in authority, he will be expected unreservedly to assure the success of programs which it is his responsibility to effectuate. If he fails to carry out any lawful rule, order, or policy or deliberately refuses to obey the proper requests of his superiors who have responsibility for his performance, he is subject to appropriate disciplinary action.

History: Rule 10-81, eff 29 Jul 81, § 7.2(b).

4.0704 Selling or Soliciting.

Employees and other persons are prohibited from selling or soliciting for personal gain within a government building occupied or used by the government 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.

History: Rule 10-81, eff 29 Jul 81, § 7.2(c).

4.0705 Outside business activity.

An employee shall not engage in any business activity or work either in the capacity of employee or otherwise, which prevents an employee from devoting his primary interests, talents, and energies to the accomplishment of his work for the government or tends to create a conflict between the private interest of an employee and his official responsibilities. The employee must notify his department head of his outside work or activity. If the department head finds there is a conflict of interest, the employee must choose between his government job and his private job.

History: Rule 10-81, eff 29 Jul 81, § 7.2(d).

4.0706 Community and Professional Activities.

Employees are encouraged to participate in activities of professional societies and of civic organizations whose purpose and objectives are not inconsistent with those of the ASG.

History: Rule 10-81, eff 29 Jul 81, § 7.2(e).

4.0707 Government Property.

Employees shall be held accountable for government property entrusted to them for their official use. It is their responsibility to protect and conserve government property, including motor vehicles and other self-propelled equipment, and to use it economically and for official purposes only. The following rules apply to all government-owned or government-leased motor vehicles and other self-propelled equipment:

- (a) All government vehicles or equipment are to be used for official business only.
- (b) No government vehicle shall be issued to any employee of the government who does not have a valid government official driving permit, and no other self-propelled equipment shall be issued to any person other than a qualified operator of the equipment.
- (c) No passengers or riders are to be transported unless they are on official government business or are employees of the government.
- (d) A valid government official driving permit must be in the driver's possession at all times while operating a government vehicle.
- (e) All accidents and traffic citations must be reported by the driver or operator to his or her immediate supervisor within 24 hours after the accident or citation.
- (f) Any department permitting an employee without a valid government official driving permit to drive a government vehicle shall be held responsible for any damage or liability incurred as a result of an accident in which such employee is involved.

History: Rule 10-81, eff 29 Jul 81, § 7.2(f).

4.0708 Gifts.

An employee shall not accept from or bestow upon any person or organization with which he 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 an official superior nor accept such a gift, except as specifically authorized by law or as cited under 4.0704(3). Except as specifically authorized by law, employees are not authorized to accept from private sources on behalf of the United States Government or of the ASG voluntary donations or cash contributions for travel expenses or the furnishing of services in kind, such as hotel accommodations, meals, and travel accommodations. This exception does not apply to approved scholarship grants, etc., which the government has approved and supervises.

History: Rule 10-81, eff 29 Jul 81, § 7.2(g).

4.0709 Information.

It is the policy of the government to accord the public free access to information about its activities. 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 presently in effect. If an employee is requested to give information outside the scope of his authority, he should refer the request through the immediate supervisor to his agency head. Inquiries from the press, radio, or TV should be referred to the department head or the public relations officer of the department.

History: Rule 10-81. eff 29 Jul 81, § 7.2(h).

4.0710 Revolutionary Organizations.

An employee may not knowingly advocate the overthrow of our constitutional form of government through membership in any organization which asserts the right to militate against the United States or ASG.

History: Rule 10-81. Eff 29 Jul 81. § 7.2(i).

4.0711 Political Affiliation.

No person in the Executive or Judicial Branch with authority to take or recommend a personnel action relative to a person in, or an eligible applicant for, a position in the government service may make inquiry concerning his political affiliation. All disclosures

concerning political affiliation shall be ignored except membership in political parties or organizations constituted by law as a disqualification for government employment. Except as may be authorized or required by law, discrimination may not be exercised, threatened, or promised by any person in the Executive or Judicial Branch against or in favor of an employee in, or an eligible applicant for, a position in the career service because of his political affiliation.

History: Rule 10-81, eff 29 Jul 81, § 7.2(j).

4.0712 Political Activity.

Employees shall not engage in unlawful political activities as defined in 7.0807 A.S.C.A. Where doubt exists as to the legality of certain activities, the employee shall request a ruling in writing from the director.

History: Rule 10-81, eff 29 Jul 81. § 7.2(k).

4.0713 Financial Responsibility.

Employees of this government are expected to satisfy their financial commitments. Failure to meet ones obligations reflects adversely on one's standing as a government employee.

History: Rule 10-81. eff 29 Jul 81, § 7.2 (l).

4.0714 Contracts With Employees.

Because contracts with its own employees are considered to be against public policy, such contracts are not permitted in the government except where it is clearly shown that the interests of the United States and ASG are the 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 forth by rules promulgated by the ASG.

History: Rule 10-81, eff 29 Jul 81. § 7.2(m).

4.0715 Financial Interests.

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,

employees are free to engage in lawful financial transactions to the same extent as private citizens.

History: Rule 10-81, eff 29 Jul 81, § 7.2(n).

4.0716 Prompt Filing of Proper Federal and Territorial Tax Returns-Prompt Payment of Taxes Due.

It is imperative that employees comply fully with all applicable requirements of government taxing authorities at all levels, federal, territorial, state and local. Employees shall:

- (1) file timely and properly all tax returns in keeping with the requirements of law, rule or ordinance;
- (2) pay timely any valid tax due.

Employees who fail to adhere to this requirement are subject to removal from government service or other disciplinary action.

History: Rule 2-87, eff 1 Apr 87, § 1.

TITLE 4 - CHAPTER 08 – TERMINATION, LAYOFF, & ADVERSE ACTIONS

Sections:

- | | |
|--------|-----------------------------------------------------------|
| 4.0801 | Discipline policy generally-Scope of reasons for removal. |
| 4.0802 | Removal, suspension, demotion of career employees. |
| 4.0803 | Probational or trial employees. |
| 4.0804 | Involuntary reassignment. |
| 4.0805 | Absence without leave-Abandonment of position. |
| 4.0806 | Resignation. |
| 4.0807 | Other termination actions. |
| 4.0808 | Layoff-Reduction-in-force. |

4.0801 Discipline Policy Generally-Scope of Reasons for Removal.

It is the policy of the ASG to ensure that employees whose performance of their duties or conduct are not satisfactory are removed from their position promptly, that those who are guilty of misconduct not sufficiently serious to justify removal be properly disciplined, that voluntary and involuntary separations be handled in an orderly manner, and that employees be protected against arbitrary or capricious action. Removal may be effected for any

of the reasons but not limited to those, referred to in this title and in the A.S.C.A.

History: Rule 10-81, eff 29 Jul 81, § 8.1.

4.0802 Removal, Suspension, Demotion of Career Employees.

- (a) Employees in the career service, not serving probationary or trial periods and who are not serving under temporary appointments or contracts, shall not be removed, suspended, or involuntarily demoted except for such cause as will promote the efficiency and the good of government service.
- (b) Discrimination shall not be exercised in suspensions, removals, or demotions because of an employee's religious belief or affiliations, marital status except as may be required by this title, race, ethnic background, or political affiliation except as may be required by law, and his physical handicap unless he is unable to perform the duties of his position.
- (c) Like penalties shall be imposed for like offenses whenever removals, suspensions, or demotions are made or when other disciplinary actions are taken.
- (d) One of the following procedures shall be followed in cases of removal, suspension, and involuntary demotion:
 - (1) The employee shall be notified, in writing, of the charges against him, and of the corrective action proposed to be recommended to the director or, in the case of the Judicial Branch, the Chief Justice, to be taken against him.
 - (2) The notice shall set forth, specifically and in detail, the charges preferred against him.
 - (3) The employee shall be allowed 3 days for filing a written answer to such charges and for furnishing affidavits in support of his answer, or he may request and shall be given the opportunity to reply orally.
 - (4) If the employee answers the charges, his answer must be considered by the agency. Following consideration of the answer, the employee must be furnished with the

agency's decision, in writing, as to the action to be recommended to the director or, in the case of the Judicial Branch, the Chief Justice.

- (5) The agency shall forward to the director copies of the charges, answer, and reasons for recommended adverse action, all of which shall be made a part of the employee's official personnel file.
- (e) The employee shall be retained in an active-duty status during the period of notice of proposed action except as follows:
 - (1) The employee may be placed on annual leave when the agency head does not consider it advisable from an official standpoint to retain him in an active-duty status during the advance notice period.
 - (2) When the employee is not placed on annual leave and the circumstances are such that his retention in an active-duty status may result in damage to government property, or may be detrimental to the interests of the government or injurious to the employee, his fellow workers, or the general public, he may be temporarily assigned duties in which these conditions will not exist, or be placed on excused absence, and is required to submit a reply to the charges within 24 hours. The employee may be placed on immediate suspension pending removal thereafter if requested of the director or, in the case of the Judicial Branch, the Chief Justice.
- (f) The director, if he considers the recommending official's request reasonable, shall advise the employee in writing of the removal action to take effect 30 calendar days from the date of the notice, the reasons therefor and that he may request a hearing before the board within 10 calendar days of the date he receives the notice.
- (g) If the employee does not appeal or if he appeals and the appeal is denied, his removal shall be processed finally in accordance with instructions applying within the office of manpower resources.

History: Rule 10-81, eff 29 Jul 81, § 8.2.

4.0803 Probational or Trial Employees.

Any employee serving a probationary or trial period shall be given a full and fair trial in the performance of the duties of the position to which appointed. Employees serving their original probationary period may be separated at any time during such period upon proper recommendation and 5 working days prior notice, without right of appeal.

- (a) Supervisors shall carefully observe the performance and conduct of employees who are serving the probationary period to determine whether the retention of such employee is in the best interests of the ASG.
- (b) Three months prior to the expiration of an employee's probationary period, the office of manpower resources shall request the agency head for a recommendation as to retention of the employee. If retention is not recommended, the agency head and the employee's immediate supervisor shall advise the director in writing. Upon receipt of the written justification, the director shall, provided the stated reasons are valid and clearly set forth, proceed with the separation actions as follows:
 - (1) Issue a written notice to the employee advising him that he will be separated as of a particular date, the reason(s), therefor, and that he has no right of appeal, except in cases of alleged discrimination because of sex, creed, color, or marital status. (See 4. II of this code.)
 - (2) Section 4.0313(a)(2) governs separation of a career service employee serving a new trial period.

History: Rule 10-81, eff 29 Jul 81, § 8.3.

4.0804 Involuntary Reassignment.

- (a) An agency head may move any employee involuntarily from one position to another, which may or may not involve a change in class, without the right of appeal, provided no reduction in grade or rate of compensation is involved; the director's or, in the case of the Judicial Branch, the Chief Justice's concurrence is necessary.

- (b) An involuntary reassignment is considered an “administrative reassignment” with the best interests of the government as the primary objectives.
- (c) Failure of an employee to comply with an involuntary (administrative) reassignment shall result in his immediate separation.
- (d) Any employee so reassigned may grieve through his agency’s grievance procedures.

History: Rule 10-81, eff 29 Jul 81, § 8.4.

4.0805 Absence Without Leave-Abandonment of Position.

When an employee fails to report for duty or to return from leave for 10 or more consecutive workdays, he may be considered to have abandoned his position. Care must be taken, however, before a final decision is made, that he has truly abandoned his position. The supervisor should 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 to term the action abandonment of position, as future employment opportunity with the government 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:

- (a) Action by Operating Officials. The employee’s agency head shall recommend to the director or, in the case of the Judicial Branch, the Chief Justice, with a request for personnel action form, that the employee be separated for abandonment of 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.
- (b) Action by Director. Upon receipt of the request mentioned in subsection (a) of this section, the director shall proceed with the separation action in accordance with instructions applying within the office of manpower resources.

History: Rule 10-81, eff 29 Jul 81, § 8.5.

4.0806 Resignation.

An employee may resign at any time he wishes to do so, subject to the following conditions:

- (a) Notice. The employee must notify his department head, in writing, of his resignation at least 2 weeks prior to the date of his separation unless the department head waives such requirement.
- (b) Withdrawal. Once submitted, the resignation is binding upon the employee and it may be withdrawn only with the department head’s consent.
- (c) In Lieu of Separation for Cause. An employee may resign with prejudice in lieu of removal or while issuance of charges leading to removal are pending. In such instances, the department head must indicate the abnormal nature of the resignation on the request for personnel action.
- (d) Rehire. An employee who resigns without prejudice is eligible for reinstatement at any time, assuming an opening exists and he has completed his probationary period. If he has not completed the probationary period or if, within the 5 years preceding the date of his current application, he resigned from ASG in lieu of removal, he will compete through regular competitive channels and if selected shall serve a new probationary period.

History: Rule 10-81, eff 29 Jul 81, § 8.6.

4.0807 Other Termination Actions.

- (a) A person serving under a temporary appointment may be terminated at any time prior to the expiration of his temporary appointment, but must be terminated on the NTE (not-to-exceed) date unless approval has been granted by the director for extension of the appointment.
- (b) A noncareer employee who has failed to qualify for a probational or career service appointment to continue his employment may be terminated by his agency upon notification to his department that he has failed to qualify.
- (c) An excepted employee; i.e., district, county and village officials, gubernatorial appointees, and staff members of the Fono with the exception of

the legislative reference bureaus may be terminated at any time upon proper notification to the director.

- (d) An employee who, during a leave of absence, accepts other employment which is contrary to the purpose for which leave was granted may be terminated.
- (e) An employee who fails to provide his department head with proper notice of his resignation may be terminated with prejudice.

History: Rule 10-81, eff 29 Jul 81, § & 7.

4.0808 Layoff-Reduction-In-Force.

- (a) When there is an impending layoff because of lack of funds, curtailment of work, or reorganization, the department head shall notify the director and the affected employee(s) in writing as soon as possible but at least 60 days in advance of the layoff unless cutoff of funds requires a shorter notice period, in which case such requirement must be stated in writing.
- (b) The provision of this section concerning placement rights are applicable to career service employees whose positions are to be abolished and to a career service employee who will be displaced by another career service employee. The provisions of this section also apply to a career service employee who is displaced by a career service employee returning from military duty, furlough, or leave.
- (c) The department head shall exhaust all possibilities in placing the employee within his department before a territory-wide reduction-in-force is effectuated.
 - (1) When there is no appropriate vacant position in which the career service employee may be placed, the department shall follow the order below in determining which employee shall be displaced:
 - (A) A noncareer service employee in the same class and pay range. When there is more than one such employee, layoff will be, first, of:

- (I) an employee serving under emergency or temporary appointment;
- (II) an employee serving a probational appointment,
- (III) a career service employee who occupies a position in the same class and grade and has the least seniority based on the service computation date;

- (B) A non-career service employee who occupies a position in another class at the same pay range, in accordance with divisions (A)(I), (II), and (III) of this subsection, provided the displacing employee - meets the minimum qualifications for such position:
- (C) A non-career status employee who occupies a position in the same series, but a lower class and pay range in accordance with divisions (A)(I), (II), and (III) of this subsection;
- (D) A noncareer status employee who occupies a position in a different series and lower class for which displacing employee meets minimum qualifications in accordance with divisions (A)(I), (II), and (III) of this subsection.

- (d) If the department head is unable to place the employee, he shall immediately notify the director, who will issue the 2-week notice of termination, place the employee on the reemployment register, and effect territory-wide RIF procedures.

History: Rule 10-81, eff 29 Jul 81. § 8.8.

TITLE 4 - CHAPTER 09 – APPEAL, GRIEVANCE, & ADMINISTRATIVE REVIEW

- Sections:
- 4.0901 Appeal-Right of career employees.
 - 4.0902 Appeal-Procedure.
 - 4.0903 Grievances.
 - 4.0904 Administrative review.
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4.0901 Appeal-Right of Career Employees.

Career employees may file appeals on matters concerning their suspension, involuntary demotion, or removal.

History: Rule 10-81, eff 29 Jul 81, § 9.1.

4.0902 Appeal-Procedure.

- (a) Form and Deadline. All appeals must be made in writing and state clearly the basis for appeal to the director and must be filed in the office of the director within 10 calendar days after the effective date of the action appealed, except in the case of reduction-in-force (see 4.0808). The appeal should also include the employee’s request for a hearing if he desires and is entitled to one.
- (b) Scheduling Hearing. The director shall include the written appeal on the agenda of the board’s next meeting. If the appeal involves a removal, suspension, or demotion, however, the director shall arrange an appeal hearing so as to effect a board decision within 30 days after appeal. However, the director may deny a hearing when a hearing is impractical by reason of unusual location or other extraordinary circumstances.
- (c) Hearing Procedures. Hearings before the board shall be conducted in accordance with the procedures promulgated by the board. Copies are available in the director’s office.
- (d) Counsel and Openness. Attendance of other interested parties and/or counsel may be limited by the director if good order, justice, and fairness will be promoted.
- (e) Death of Appellant. A proper appeal filed before the death of the employee must be processed to completion and adjudicated. If appropriate, the board 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.
- (f) File Access. Prior to the hearing the entire appeal file shall be made available upon request to the employee and his representative except when a file contains medical records concerning a physical or mental condition of which a prudent

physician would hesitate to inform the person concerned.

- (g) Notice of Hearing. All parties shall be served with notice at least 10 days before the date set for the hearing. The notice shall state the time and place of such hearing.
- (h) Depositions. A party who desires to take the deposition of any person in an oral examination shall give reasonable notice of not less than 3 days in writing to the board and all parties. The notice shall state the time and place of taking the deposition and the name and address of each person to be examined.
 - (1) The deposition officer shall be a person who is authorized to administer oaths by the laws of the territory of American Samoa.
 - (2) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. He shall then securely seal the deposition in an envelope endorsed with the title of the proceedings and marked “Deposition of (here insert name of witness)” and shall promptly send it by registered or certified mail to the director for filing. The party taking the deposition shall give prompt notice of its filing to all other parties.
- (i) Case Presentation and Testimony.
 - (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 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 may decline to permit such person

to appear in a representative capacity in any proceeding before the board.

- (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.
- (j) Conclusions. Within 30 days after the original notice, the board shall make and fully record in its permanent records findings 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 shall send a copy of the findings and conclusions to the employee at his address as given at the hearing or to a representative designated by him.
- (k) 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.
- (1) 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.
- (m) Correction of Classification. Correction of a classification decision which results in a promotion or demotion shall be handled as stated in 4.0313. The board will determine the effective date of any such action.

History: Rule 10-81, eff 29 Jul 81, § 9.2; and Rule 13-83, eff 11 Aug 83.

4.0903 Grievances.

- (a) Filing. Grievances may be filed orally or in writing by any person, at any point of contact within government. If the grievance is misdirected (complaints about another department) the grievant shall be properly directed. The following types of action are typical of those which may be grieved, but is not all-inclusive:

- (1) Performance evaluation;

- (2) Leave (denial);
- (3) Promotion;
- (4) Letters of reprimand;
- (5) Reassignment;
- (6) Increment (denial);
- (7) Hours of work;
- (8) Discrimination or bias;

- (b) Procedure. All departments shall have a 3-part grievance procedure, as follows:

- (1) Each grievance shall be placed in writing, and resolution attempted by the appropriate supervisor at the lowest level.
- (2) Failing resolution, the grievance shall then be elevated to an uninvolved higher level in the department, and the grievant allowed to present testimony in his behalf in an informal hearing. This hearing shall be conducted in accordance with the procedures shown in the Personnel Operations Manual.
- (3) If the recommendation of the hearing officer falls to satisfy the grievant, the case will be forwarded to the director for final decision. If the case is carried beyond this point by the grievant, it must be as an appeal to the board.

- (c) Exception. In cases involving suspension, demotion, or dismissal of a career' service employee, no grievance is filed. Since only the director may serve written notice of such actions, the only appropriate and allowable employee response is an appeal to the board.

History: Rule 10-81, eff 29 Jul 81, § 9.3.

4.0904 Administrative Review.

The director has responsibility for the recruitment, examination and certification of eligibles, and for the proper classification of positions to titles, grades and pay. Any person who believes his application to have been improperly evaluated and/or any employee who believes his position to have been improperly

evaluated, may request in writing that the director review his case.

- (a) The request must indicate the person’s basis for his belief that his application, or his position were improperly evaluated.
- (b) The request, to be acceptable, must be filed within 10 calendar days of the official notice to the employee.
- (c) The director shall review the case and notify the person, in writing, of the findings upon review.
- (d) If still dissatisfied, the person may file appeal, following the procedures outlined in 4.0902.

History: Rule 10-81, eff 29 Jul 81. § 9.4.

TITLE 4 - CHAPTER 10 – CONTRACT SPECIALISTS

Sections:

- 4.1001 When Hiring Permitted-Employment Agreement.
- 4.1002 Assignment-Recruitment- Selection.
- 4.1003 Compensation-Absence with Pay-Review and Reclassification.
- 4.1004 Transportation.
- 4.1005 Annual Leave-Sick Leave.
- 4.1006 Medical Benefits.
- 4.1007 Termination for Cause.
- 4.1008 Resignation-Termination Without Cause.
- 4.1009 Renewal of Contract.
- 4.1010 Employment After Term of Contract.
- 4.1011 Conduct-Reassignment-Career Service Eligibility-Self-Employment.
- 4.1012 Grievances-Striking Prohibited.
- 4.1013 Training.
- 4.1014 Work-Product Ownership-Discoveries and Documents.
- 4.1015 Dependents Defined-Family Status Reports.
- 4.1016 Immigration Status-Departure Upon Termination.

4.1001 When Hiring Permitted-Employment Agreement.

When there are no qualified eligibles available for a given position, excepted appointments of qualified

eligibles residing outside of American Samoa may be made by contract. The terms of a contract specialist’s employment are specified in the employment agreement he signs with the government.

History: Rule 10-81. eff 29 Jul 81. § 10.1.

4.1002 Assignment-Recruitment-Selection.

The following are rules concerning contract specialists which are not contained in the standard contracts, or which require amplification:

- (a) Assignment of Duties. While the contract specialist is designated to serve in the position for which he signs, the needs of the government will determine other assignments and specific designations.
- (b) Recruitment Policy.
 - (1) Positions must be advertised locally prior to off-island, except that where the shortage of qualified eligibles is known in advance, recruitment may be performed simultaneously.
 - (2) Off-island recruitment efforts conducted by department heads must be coordinated with the office of manpower resources.
- (c) Selection Policy. Selection for contract positions must be made solely based upon fitness and merit, without regard to race, color, sex, age, religion, national origin, or politics.
- (d) Medical Examination. All selectees and their accompanying dependents shall be required to provide evidence of good health as shown by preemployment physical examinations, the reports of which shall be evaluated by the director, department of health.
- (e) Verification of Qualifications. Acceptance by the director of verifications of the candidate’s claimed qualifications and references, and any reports of interviews of candidates and married candidate’s spouses, is required.

History: Rule 10-81, eff 29 Jul 81, § 10.2.

**4.1003 Compensation-Absence with Pay-
Review and Reclassification.**

- (a) Compensation for positions filled by contract shall be in accordance with established ASG salary rates based on the salary rates of the career service. Base salaries shall be taken from the appropriate ASG salary schedule and the rules, concerning same. A contract specialist employee whose employment agreement is on a 10-month basis shall have his annual salary prorated over 12 months of each calendar year of employment.
- (b) Contract specialists are not entitled to overtime compensation.
- (c) Contract specialists may be granted absence from duty with pay on those holidays recognized by the federal government and/or the ASG.
- (d) If substantial changes are contemplated in the duties and responsibilities assigned to a contract specialist during the life of his agreement, the department involved may request a review of the contract position and reclassification by the office of manpower resources.
 - (1) If the change is to a vacant position which is not under the supervision of the employee's hiring agency then the hiring agency head will be made a party to the agreement and he will also sign the amendment form and personnel/payroll action request which authorizes the interagency position change.
 - (2) If a change of position involves a change of grade and salary, then a lump sum accumulated leave payment will be made to the employee at the salary rate in effect at the conclusion of his unamended term of service. The employee will begin to accumulate annual leave at the adjusted salary rate, commencing with the effective date of the contract amendment.
- (e) During the tenure of the contract, the contract specialist shall receive step increments as detailed in 4.0409.

History: Rule 10-81, eff 29 Jul 81, § 10.3.

4.1004 Transportation.

- (a) Entitlement at Hiring and Separation. The government will furnish transportation for the contract specialist and his dependents, his household goods and professional materials from his permanent residence to American Samoa. If the contract specialist has fully performed the terms and conditions of his agreement in a manner satisfactory to the government, the government will furnish transportation for the contract specialist, his dependents, his household goods and professional materials to his place of residence from American Samoa.
 - (1) The contract specialist and his dependents are authorized economy, jet air travel accommodations between the point of hire and American Samoa. Unless specifically authorized on the travel authorization, additional cost for superior accommodations or excess baggage shall be borne by the contract specialist.
 - (2) When a vacant contract specialist position is filled by a qualified nonresident candidate who is temporarily residing in American Samoa, no provision will be made by the government for his travel or shipment of household goods to the territory. The government will contract to return him and his dependents to his preagreed permanent residence at the satisfactory conclusion of his employment.
 - (3) Non-government furnished transportation expenses (private yacht, aircraft) incurred by a contract specialist and his dependents by travel to American Samoa to report to duty may be reimbursed to him in amounts not to exceed that authorized for one-way, economy jet air fare as stipulated by ASG travel rules. The request for reimbursement must be supported by receipts or other evidence of payment.
 - (4) The transportation expenses mentioned in his employment agreement shall constitute the measure of damages for a breach of his agreement by the contract specialist.

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(b) Remaining After Contract. If the contract specialist, with immigration approval, elects to remain in American Samoa upon completion of his contract, the government’s obligation for return transportation and household shipment shall be forfeited.

(c) Property Allowed and Prohibited. The weight allowance for the shipment of household effects is limited to that personal property essential to the comfort and convenience of the contract specialist and his dependents which may be transported legally in interstate commerce. It includes household furnishings, equipment and appliances, furniture, clothing, books, and similar property. Household effects do not include property which is for resale or disposal rather than for use by the contract specialist or members of his immediate family, nor does it include such items as motor vehicles, airplanes, trailers, boats, pets, livestock, cordwood, building materials, property belonging to persons other than the contract specialist and his immediate family, or any property intended for use in conducting a business or other commercial enterprise.

- (1) The firearms laws in the United States differ from territorial legal restrictions. Weapons and ammunition of any kind are prohibited, including air guns, without prior licensing and registration.
- (2) The only domestic pets which may be brought into the territory are dogs and cats from the mainland U.S., Hawaii, Guam, Trust Territory of the Pacific Islands, Australia, and New Zealand. Animals from the mainland, Guam, and T.T.P.I. must be quarantined for 120 days in Hawaii. The extensive rules pertaining to this matter are available from the department of agriculture; some are codified at 24.03 of this code.
- (3) The importation, production, and use of hallucinogens and potentially harmful drugs are strictly prohibited and punishable by law.

(d) Cash Payment. In lieu of authorized weight allowances for overland and ocean shipments, cash payments in accordance with the following schedule will be made to contract employees for those shipments for the purpose of effecting savings to the government:

Total Cash Payments			
Family Size	Estimated Weight Used for Calculations (pounds)	East of Mississippi	West of Mississippi
1	1,125	\$ 1,200	\$ 1000
2	1,810	\$ 2,000	\$ 1,600
3	2,030	\$ 2,100	\$ 1,700
4	2,250	\$ 2,300	\$ 1,900
5	2,360	\$ 2,400	\$ 2,100

Special arrangements will be separately negotiated for contract employees not residing in the U.S. Any portion of a cash payment from this schedule that is not applied to the cost of household/professional effects shipment inures to the benefit of the employee. Employees will be issued cash reimbursements from the schedule upon arrival in the territory. Any exception for newly hired employees resulting in the issuance of a letter of credit to the selected shipping agency may be made only by the treasurer or higher authority.

- (1) Standard insurance coverage that is provided by the packer and shipper is based upon net weight only. If the contract specialist wishes to insure on the basis of value, he must acquire additional insurance at his own expense.
 - (2) Customs rules applicable to the shipment of household effects must be observed for all travel. The contract specialist is responsible for compliance with the appropriate rules. Except for extenuating circumstances, he is liable for additional charges imposed by customs or port authorities.
- (e) Doctors and Dentists. Exceptions have been made to this policy for the department of health as a result of doctors and dentists having been placed in a worldwide shortage category by the Federal Civil Service Commission.
- (1) A contract specialist physician or dentist is authorized a net weight allowance to be

placed into and maintained as insured storage at government expense and an additional cash payment for 1,000 pounds of estimated weight from the schedule shown in subsection (d) of this section for professional materials. The maximum total of the estimated weight allowances, including that for storage, may not exceed 11,000 pounds. Government liability for stored material is limited to the storage handling, maintenance, and insurance charges only and not to loss or damage. The stated government liability will expire 30 days after the termination date of the contract specialist physician's or dentist's employment agreement.

(f) **Renewal Benefits.** If the contract specialist's employment agreement is renewed:

(1) a renewal bonus of \$1,000 will be paid for 2 years' renewal on the first pay period following the effective date of the new contract.

(2) Round-trip, economy jet air transportation is authorized for himself and his dependents.

(A) A contract specialist who renews his contract may be authorized round-trip transportation to a point other than his original point of hire; however, the government will only pay up to as much as the cost of economy jet transportation directly to his original point of hire. The contract specialist is required to pay for any extra travel charges in excess of his allowance.

(B) If the contract specialist's selected travel routing is at less cost than that to the original point of hire, the contract specialist is not entitled to the difference.

(C) All travel purchased by the contract specialist with the travel authorization must be used on the same trip. For example, if a renewing contract specialist is authorized round-trip fare to San Francisco and decides to go

only as far as Hawaii and return, he has exhausted all travel authorized by his travel authorization form. He may not, at some future date, use the difference in fare to obtain further travel.

(g) **Completion-of-contract Entitlement.** If the contract specialist satisfactorily fulfills the conditions of his employment agreement, he and his dependents are entitled to:

(1) one-way, economy jet air transportation to his permanent residence;

(2) unaccompanied air freight allowance if provided by the original, travel authorization;

(3) ocean freight shipment allowance for household effects as provided by the original travel authorization;

(4) additional ocean freight shipment allowance for professional materials as provided by original travel authorizations.

History: Rule 10-41, eff 29 Jul 81, § 10.4.

4.1005 Annual Leave-Sick Leave.

(a) A contract specialist whose employment agreement is on a 12-month basis shall accrue annual leave at the rate of 1 working day for each full biweekly pay period during the tenure of his agreement; regardless of the amount of time worked during each pay period, except for periods of leave without pay.

(1) Provided that he is fulfilling all of the terms and conditions of his agreement in a manner satisfactory to the government and, if the government determines that his services can be spared, he may be granted leave upon his request at any time.

(2) He may be administratively required by the government to take leave at any time.

(3) At the expiration of his agreement, the contract specialist will be paid in a lump sum for a maximum of 60 days of unused, accumulated annual leave, computed at the salary then in effect.

(4) Only if it is for the convenience of the government, the contract specialist may elect to apply accumulated annual leave in total or in part in lieu of lump sum payment to an equivalent number of days' absence immediately preceding and extending to the expiration date of his agreement. He will not, however, be entitled to accrue annual leave while on terminal leave.

(b) A contract specialist whose employment agreement is on a 10-month basis shall not accrue annual leave but shall not be required to work during the school vacation period as designated by the department of education and the community college.

(c) The contract specialist shall accrue sick leave with pay at the rate of 1-half day per full biweekly pay period and may be allowed such additional sick leave without pay as the government at its discretion may deem necessary.

History: Rule 10-81, eff 29 Jul 81, § 10.5.

4.1006 Medical Benefits.

(a) The contract specialist and his dependents will be entitled to medical and dental services in American Samoa to be furnished by the government. Such services may be subject to a nominal service charge to be paid by the contract specialist. Medical services shall be within the limits of the government's personnel, supplies, and facilities available from time to time in American Samoa. The contract specialist and his dependents will also be entitled to off-island medical care to the same extent furnished from time to time to American Samoans by the government; provided, that the contract specialist will be required to use and apply entitlement to hospital, medical and dental care benefits which he may have as a veteran of the armed forces or as a participant under any other program or insurance plan; and provided further that return travel of the discharged patient, or an authorized accompanying family member, will not be provided should it be determined, in the judgment of the director, department of health, that due to the health of the contract specialist or the dependent, the contract specialist should not

remain in American Samoa, in which event the entitlements upon normal expiration of the term of service will be provided.

History: Rule 10-81 eff 29 Jul 81, § 10.6; and Rule 14-83, eff 14 Aug 83, § 1.

4.1007 Termination for Cause.

The government may discharge the contract specialist and terminate his employment agreement for cause, including dereliction or unsatisfactory performance of duty or misrepresentation or conviction of any criminal offense. Pending a hearing and final determination, the contract specialist may be suspended without pay or other benefits.

(1) Removal shall be recommended to the director, office of manpower resources, by the employee's agency head in writing, supported by a written account of the circumstances and events underlying the recommendation.

(2) Upon receipt of the written justification recommending the removal of an employee, the director shall give careful consideration to such recommendation and all background information of record. In this connection, the director is expected to consult with the ASG official concerned.

(3) The director, if he considers the recommendation to be reasonable, shall advise the employee in writing of:

(A) the charges brought against him;

(B) the fact and effective date of his suspension without pay.

History: Rule 10-81, eff 29 Jul 81, § 10.7.

4.1008 Resignation-Termination Without Cause.

(a) If the health of the contract specialist or that of any of his dependents, through no fault of his own, becomes so impaired that, in the judgment of the director of health, he should not remain in American Samoa, he may resign and receive the full benefits accorded to a contract specialist whose employment agreement has been satisfactorily fulfilled. The government will not be liable for the return travel of the contract specialist, his dependents, household goods, and

personal effects if his physical disability is a direct result at excessive and nonprescribed use of alcohol or harmful drugs.

- (b) If an unforeseen personal emergency should arise which requires the immediate presence of the contract specialist outside of American Samoa and such emergency is verified to the satisfaction of the government by the American Red Cross or other appropriate agency, the contract specialist may resign and be entitled to the full benefits to which he would have been entitled upon normal expiration of the term of service under his employment agreement.
- (c) Should the contract specialist breach his agreement by resignation from his employment with the government prior to the end of the contracted tenure (or during the first half of his term of service), he shall forfeit all rights to transportation for himself his dependents and their personal effects and household goods and shall be obligated to repay to the government such expenses as it may have incurred or paid to him on this account in connection with his term of service.

Should the contract specialist's resignation from his obligations to his agreement occur after 1 year's contracted tenure (or during the second half at his term of service), he shall forfeit all rights to transportation for himself, his dependents, and his and their personal effects and household goods but shall not be obligated to repay to the government such expenses as it may have incurred or paid to him on this account in connection with his term of service.

- (d) Upon 30 days' notice to the employee, the government may terminate his employment agreement at the discretion of the government without recourse on the part of the employee. In the case of termination of employment as provided in this subsection, the employee shall be entitled to transportation, subsistence, and other benefits to which he would be entitled upon normal expiration of the term of service under his agreement.

History: Rule 10-81, eff 29 Jul 81. § 10.8.

4.1009 *Renewal of Contract.*

- (a) Contract renewal is the prerogative of the government and is based solely upon need and performance of a contract specialist as determined by the government and is contingent upon approval of the contract specialist's continued employment by the director.
- (b) A contract specialist must address his request for contract renewal in writing to the director, office of manpower resources not less than 90 calendar days prior to the expiration date of his current agreement.
- (c) Renewal of a contract for a 1-year period will be limited to 1 renewal unless prior approval is obtained in writing from' the director, office of manpower resources.

History: Rule 10-41, eff 29 Jul 81. § 10.9.

4.1010 *Employment After Term of Contract.*

If employment of the contract specialist continues beyond the term of service specified in his agreement without the execution of a new agreement, such employment shall be deemed to be at will and may be terminated by either party on reasonable notice to the other. All of the terms and conditions of his agreement, except those pertaining to termination for cause, shall continue in effect during such extended period of employment.

History: Rule 10-81, eff 29 Jul 81. § 10.10.

4.1011 *Conduct-Reassignment-Career Service Eligibility-Self-employment.*

- (a) Contract specialists are expected to conduct themselves both on and off-the-job as employees of ASG. Rules regarding outside work, conflict of interest, and political activities published in the A.S.C.A., and elsewhere in this title apply equally to contract employees.
- (b) A contract specialist is precluded by and for the duration of his contracted term of service from competing for other vacant positions with the ASG. He may, however, request reassignment to a vacant position and his request may be granted at the discretion of his agency head and the selecting authority when to do so is in the interest of the government.

- (c) At the expiration of a contract, every effort shall be made to fill the contract position in the career service. If a position which has been filled by contract can be filled within the career service, the incumbent of that position can compete for the position on a career service basis if he is entitled to permanent residency in American Samoa or if his/her spouse is entitled to permanent residency.
- (d) Contract specialists shall not engage in self-employment in American Samoa, either directly or indirectly, in any form whatsoever, during the terms of their agreements.

History: Rule 10-81, eff 29 Jul 81, § 10.11.

4.1012 Grievances-Striking Prohibited.

- (a) Contract specialist grievances shall be processed the same as those made by other employees. In case of an alleged violation of the contract specialist's agreement, his continued employment shall not be deemed a waiver by either party of his claim. The government consents to be sued on account of any matter of dispute arising over his agreement but only in the High Court of American Samoa.
- (b) The contract specialist agrees by contract not to participate in any strike against the government or any of its agencies during his term of service.

History: Rule 10-81, eff 29 Jul 81, § 10.12.

4.1013 Training.

Nominations for the training of contract specialists shall be submitted by his immediate supervisor to the director of manpower resources who shall retain discretion for its approval or disapproval. No contract specialist shall be recommended for training to gain skills or knowledge which he might reasonably be expected to possess in order to have been selected for his position.

History: Rule 10-81, eff 29 Jul 81, § 10.13.

4.1014 Work-Product Ownership-Discoveries and Documents.

Any and all inventions, improvements, discoveries, documents, reports, memoranda, and data developed by the contract specialist relating to his position with the government will be the sole and absolute property

of the government, and the government will be the sole and absolute owner of all patents, copyrights, or other rights in connection therewith.

History: Rule 10-81, eff 29 Jul 81, §10.14.

4.1015 Dependents Defined-Family Status Reports.

Dependents, as defined, shall be interpreted to mean the spouse and minor dependent children of the contract specialist, who are identified as such at the time his agreement is executed and who will reside with him at American Samoa for at least one year of the term of his agreement. It is the responsibility of the contract specialist to make known to the office of manpower resources changes in his family status as they occur.

History: Rule 10-81, eff 29 Jul 81, § 10.15.

4.1016 Immigration Status-Departure Upon Termination.

- (a) A contract specialist, by virtue of his employment with the government, obtains residency status within the territory for the duration of his agreement or term of service. In the event of the termination of his agreement for any reason whatsoever, the contract specialist contractually agrees to depart from the territory within 30 days from the termination date.
- (b) Contract specialists who are not United States citizens must register annually as alien residents' with the immigration division of the department of legal affairs.

History: Rule 10-81, eff 29 Jul 81, § 10.16.

TITLE 4 - CHAPTER 11 – EQUAL OPPORTUNITY-AFFIRMATIVE ACTION

Sections:

- 4.1101 Policy Generally-American Samoan Preference.
- 4.1102 Affirmative Action Conformance to Federal Provisions.
- 4.1103 Enforcement Responsibility-Staff, Subcontractor, Contracting Agency Compliance.
- 4.1104 Compliance Officer.
- 4.1105 EEO coordinators-Publicity.

- 4.1106 Contract-Seeker Compliance-Third Parties-Monitoring.
- 4.1107 Grievances-Appeals.
- 4.1108 Equal Employment Opportunity Affirmative Action Plan.

Appendix A

4.1101 Policy Generally-American Samoan Preference.

- (a) It is the policy of the ASG to provide and promote equal opportunity in employment to people without discrimination because of race, creed, color, sex, religion, national origin, age, handicaps, marital status, political affiliation, or other non-merit consideration.
- (b) Pursuant to 7.0204(b) A.S.C.A., and as an integral, part of the equal employment opportunity policy, the government shall employ residents of American Samoa who are American Samoans or United States nationals, and shall employ other persons only when no American Samoans or United States nationals who meet the minimum qualifications for a particular class or work can be found. The Executive Branch initiates this policy in recognition that:
 - (1) it is necessary to identify and deal with discrimination and obstacles to equal employment opportunity, intended or unintended;
 - (2) well-conceived, planned, and realistic actions are necessary to provide for achieving true equality of opportunity;
 - (3) these actions must be aggressively pursued;
 - (4) an effective periodic self-evaluation is needed to ascertain whether predetermined goals are being met; and
 - (5) this evaluation will result in updating the action plan as necessary, to meet changing needs and to effectively resolve problems.

History: Rule 10-81, eff 29 Jul 81, § 11.1.

4.1102 Affirmative Action Conformance to Federal Provisions.

An affirmative action plan has been prepared for use by ASG in its efforts to provide equity in employment to women, minors, and other victims of discrimination. This EEO-AA plan is intended to conform to federal requirements of Title VI of the Civil Rights Act of 1964, § 808 of the Civil Rights Act of 1968, Executive Orders 11063, 11246, and 11375, § 109 of the HUD Act of 1974 and § 3 of the HUD Act of 1968.

History: Rule 10-81, eff 29 Jul 81, § 11.2(a).

4.1103 Enforcement Responsibility-Staff, Subcontractor, Contracting Agency Compliance.

- (a) The responsibility and authority for the enforcement of this policy pertaining to the ASG Affirmative Action Plan and its goals are vested in the director, office of manpower resources, ASG, who will be responsible for the implementation, administration, and compliance of the EEO policies and AA plan, and will directly supervise the ASG EEO compliance officer.
- (b) All staff, subcontractors, and all contracting agencies utilizing federal funds administered by ASG are required to comply with this policy with reference to recruitment, hiring, training, and compensation.

History: Rule 10-81, eff 29 Jul 81, § 11.2(b).

4.1104 Compliance Officer.

An EEO compliance officer (EEOCO) shall be appointed within the office of manpower resources and will have the responsibility of promoting, coordinating and monitoring this plan. The duties and responsibilities of the EEOCO are as follows:

- (a) Following the policy statement and Affirmative Action Plan, providing an effective procedure to communicate EEO procedures;
- (b) Acting as the focal point for all EEO activities, particularly in the development and implementation of the ASG Affirmative Action Plan;

- (c) Providing continuous assistance to management in collection and analysis of employment data, identifying problem areas, setting goals and timetables, and developing programs to achieve goals. Following through on programs to assure set goals are accomplished on time;
- (d) Consulting with and advising all ASG agencies on matters pertaining to the administration of the EEO policies;
- (e) Working with schools, women's groups, and organizations to encourage entrance of women into employment training programs, and assisting in development of new training resources for women;
- (f) Submitting to the director of manpower resources quarterly progress reports pertaining to the EEO program;
- (g) Assisting ASG administrators and contractors in preparing effective programs criteria, compiling and disseminating public information for the Governor and his department/agency heads, implementing equal-employment opportunity policies and open-occupancy statements, directing preparation of related correspondence including recommendations on EEO, investigating formal and informal complaints of alleged discrimination by parties to agreements and recommending procedures to ensure compliance with all ASG contract provisions which promote equal opportunity objectives, and attending pre-award and pre-occupancy conferences;
- (h) implementing a system for receiving and investigating complaints and/or grievances of discrimination in accordance with EEO rules;
- (i) Investigating formal and informal complaints of alleged discrimination and contract noncompliance, and implementing procedures to resolve each case;
- (j) Participating in programs and conferences regarding fair and equal opportunity practices and assisting in servicing the Affirmative Action Plan.
- (k) Establishing and maintaining contact as the ASG primary working liaison and representative with the community and all public agencies' contracting groups with regard to equal employment policies and opportunities;
- (l) Requiring that all affirmative action plans submitted by subcontractors or proposed subcontractors are in line with ASG's affirmative action requirements for employment for American Samoan and United States nationals as mentioned in 4.1101.
- (m) Submitting to the director, manpower resources, reports on the progress of ASG in achieving established goals and making necessary recommendations for additional efforts in accomplishing goals of the affirmative action program.

History: Rule 10-81, eff 29 Jul 81, § 11.2(c).

4.1105 EEO Coordinators-Publicity.

ASG's EEO policy and Affirmative Action Plan will require an overall understanding of each department/agency head about his or her role in meeting ASG goals and objectives. Each department/agency head shall appoint an EEO coordinator. Every effort will be directed in educating ASG, contractor, and subcontractor personnel to clarify their understanding and responsibilities for carrying out EEO policy and the Affirmative Action Plan as a basic part of their jobs.

History: Rule 10-81, eff 29 Jul 81, § 11.2(d).

4.1106 Contract-Seeker Compliance-Third Parties-Monitoring.

All nonfederal or non-federally assisted projects, contractors, subcontractors, developers, consultants, appraisers, and other technical specialists will be informed by ASG that anyone seeking a contract with ASG must undertake a program of equal employment opportunity. Any company or individual discriminating in his/her employment practices on the basis of race, creed, color, religion, sex, or national origin will not be eligible for contracts with ASG. It will be the responsibility of the EEOCO to monitor these procedures and activities for compliance, and to undertake any necessary corrective measures. The actions and guidelines contained in this policy shall

be applicable also to all third parties involved in the project.

History: Rule 10-81, eff 29 Jul 81, § 11.2(e).

4.1107 Grievances-Appeals.

Grievances and appeals resulting from the implementation of this plan shall be handled in accordance with the procedures outlined in Chapter 09 of the ASG Personnel Administration Regulations.

History: Rule 10-81, eff 29 Jul 81, § 11.2(1).

4.1108 Equal Employment Opportunity Affirmative Action Plan.

- (a) The rule codified in this section is issued under the authority of Section 6 of Article IV of the Revised Constitution of American Samoa.
- (b) It is the policy of the ASO to provide and promote equal opportunity in employment to people without discrimination because of race, creed, color, sex, religion, national origin, age, handicaps, marital status, political affiliation, or other nonmerit consideration.
- (c) This policy shall be implemented in accordance with the Equal Employment Opportunity Affirmative Action Plan, attached to this chapter as Appendix A and incorporated in full, by reference, herein.

History: Rule 11-81 eff. Ord. 7-1980, eff 20 Nov 80, §§ 1,2,3.

APPENDIX A

EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION PLAN

POLICY STATEMENT

It is the policy of the ASG to provide and promote equal opportunity in employment to people without discrimination because of race, creed, color, sex, religion, national origin, age, handicaps, marital status, political affiliation, or other nonmerit consideration.

Pursuant to 7.0205(b) A.S.C.A., and as an integral part of the Equal Employment Opportunity policy, the government shall employ residents of American Samoa who are American Samoans or United States nationals, and shall employ other persons only when no American Samoans or United States nationals who

meet the minimum qualifications for a particular class of work can be found.

The Executive Branch initiates this policy in recognition that:

- (1) it is necessary to identify and deal with discrimination and obstacles to equal employment opportunity, intended or unintended;
- (2) well-conceived, planned and realistic actions are necessary to provide for achieving true equality of opportunity;
- (3) these actions must be aggressively pursued;
- (4) an effective periodic self-evaluation is needed to ascertain whether pre-determined goals are being met, and
- (5) this evaluation will result in updating the action plan as necessary, to meet changing needs and to effectively resolve problems.

Peter T. Coleman Governor

EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION PLAN

This Equal Employment Opportunity Affirmative Action Plan is intended to conform to federal requirements of Title VI of the Civil Rights Act of 1964, Section 808 of the Civil Rights Act of 1968, Executive Orders 11063, 11246, and 11375; Section 109 of the HUB Act of 1974 and Section 3 of the HUD Act of 1968.

The plan is in 3 parts: Background, Administration, and Action Steps. Charts giving current demographic and employment data and annual goals are attached in support of the plan.

I. Background.

The territory of American Samoa presents a unique and sometimes confusing problem for those who are concerned with administering equal employment opportunity (EEO) policy. Samoan people of any nationality are counted as “minority” for all mainland U.S. purposes, yet in American Samoa they represent almost all of the permanent population. A group of 100 to 1000 “palagi’s” (non-Samoan whites,

orientals, and others) cycles in and out on contract positions and in nongovernmental jobs.

Since “minority” employment problems extend locally, it is appropriate to provide employment preferences to Samoan residents and impose immigration controls on alien entry, residence and employment. Thus, in accordance with territorial statutory laws, applicants are not employed by the ASG unless resident American Samoans or United States nationals are unavailable and immigration clearance is granted.

There is no evidence of discrimination in other factors except for sex. Samoan culture has always barred men and women from certain occupations, though most of these restrictions were involved with traditional family and village activities which are rapidly changing in the face of economic and educational advancement.

The attached data shows non-Samoans (called “nonminority”) holding down most ASG jobs in the higher salary ranges. This results from the necessity for filling key jobs with contract employees when the pool of available Samoan talent is exhausted. These contracts are renewable every 2 years, and are readvertised prior to each contract period. Attempts by ASG to overcome this problem through scholarships and intensive recruitment have produced a steady decline in the number of nonminority hires; however, equity is still some years off.

This plan, therefore, deals initially only with inequities with regard to the employment opportunities for women, and the hiring of “minorities” in higher-paying positions.

When the 1980 census data, are available, the question of other employment inconsistencies will be reviewed.

II. Administration.

A. Responsibility. The responsibility and authority for the enforcement of this policy pertaining to the Affirmative Action Plan and its goals are vested in the director, department of manpower resources, ASG, who will be responsible for the implementation, administration, and compliance of the equal employment opportunity policies and Affirmative Action Plan.

All staff, subcontractors, and all contracting agencies utilizing federal funds administered by ASG are required to comply with this policy with reference to recruitment, hiring, training, and compensation.

B. Duties and Responsibilities of the Equal Employment Opportunity Compliance Officer. An equal employment opportunity compliance officer (EEOCO) shall be appointed within the department of manpower resources and will have the responsibility of promoting, coordinating and monitoring this plan.

The duties and responsibilities of the EEOCO are as follows:

1. Following the policy statement and Affirmative Action Plan provide an effective procedure to communicate EEO procedures;
2. Acting as the focal point for all EEO activities, particularly in the development and implementation of the ASG Affirmative Action Plan;
3. Providing continuous assistance to management in collection and analysis of employment data, identify problem areas, setting goals and timetables, and developing programs to achieve goals, and following through on programs to assure set goals are accomplished on time;
4. Consulting with and advising all ASG agencies on matters pertaining to the administration of the EEO policies;
5. Working with schools, women’s groups and organizations to encourage entrance of women into employment training programs, and assisting in development of new training resources for women;
6. Submitting to the director of manpower resources quarterly progress reports pertaining to the EEO Program;
7. Assisting ASG administrators and contractors in preparing effective programs criteria, compiling and disseminating public information for time Governor and his department/agency heads, implementing equal employment opportunity policies and open occupancy statements, directing preparation of related correspondence including recommendations on EEO;

investigating formal and informal complaints of alleged discrimination by parties to agreements n.,A --o d procedures to ensure compliance with all ASG contract provisions which promote equal opportunity objectives, and attending preaward and preoccupancy conferences;

8. Implementing a system for receiving and investigating complaints and/or grievances of discrimination in accordance with EEO regulations;
9. Investigating formal and informal complaints of alleged discrimination and contract noncompliance, and implementing procedures to resolve each case;
10. Participating in programs and conferences regarding fair and equal opportunity practices and assisting in servicing the Affirmative Action Plan;
11. Establishing and maintaining contact as the ASG primary working liaison and representative with the community and all public agencies' contracting groups, with regard to equal employment policies and opportunities;
12. Requiring that all affirmative action plans submitted by subcontractors or proposed subcontractors are in line with ASG's affirmative action requirements for employment for American Samoans and United States nationals as mentioned in the Policy Statement;
13. Submitting to the director, manpower resources, reports on the progress of ASG in achieving established goals and make necessary recommendations for additional efforts in accomplishing goals of the affirmative action program.

C. Dissemination of Equal Employment Opportunity Affirmative Action Policy. ASG's EEO policy and Affirmative Action Plan will require an overall understanding of each department/agency head about his or her role in meeting ASG goals and objectives. Each department/agency head shall appoint an EEO coordinator. Every effort will be directed in educating ASG, contractor, and subcontractor personnel to clarify their understanding and responsibilities for carrying out EEO policy and

the Affirmative Action Plan as a basic part of their jobs.

ASG will publicize the plan as follows:

1. Internally:
 - a. All staff members (directors, managers, supervisors, officials, administrators, professionals, technicians, office and clerical employees and other employees);
 - b. All territory employment and training council members.

Internal communication of policy statement and objective of the ASG-Affirmative Action Plan will be disseminated and publicized in the following manner:

Written communication from the Governor's Office;

ASG's policy manuals, handbooks, operating manuals and annual reports will include the EEO policy statement;

A copy of this written Affirmative Action Plan will be maintained by each department/ agency;

EEOCO shall conduct meetings with EEO Coordinators to inform them of existing and changing legislation in the equal employment opportunity field.

2. Externally:
 - a. Subcontracting agencies;
 - b. Community groups and women's organizations;
 - c. General public.

ASG recognizes the importance of keeping an open-line or communication between itself and community organizations, especially those which represent minorities, women, young people, the aged, handicapped individuals, and veterans. These are the organizations which reach many of the people for whom services are intended. ASG, contractors, and subcontractors shall use the following methods of external communications:

All employment announcements, help-wanted ads, and other advertising should include the statement “Equal Opportunity Employer” (male or female, M/F.)

Keep all contractors and subcontractors informed in writing of ASG’s current EEO policies.

Inform the educational institutions, community agencies, and community leaders of ASG’s EEO policies.

Notify general public through available news media and other sources of ASG’s EEO policies.

Disseminate policy statement to local community organizations and groups utilizing radio and television to inform the public of ASG’s policy and programs as well as a summary of key elements of the affirmative action program.

III. Action Steps.

A. Determination of Inequities and Setting Goals.

1. EEO data:

Periodically, the information systems office of ASG will provide to the EEOCO printouts of special reports which have been designed to be responsive to EEO needs. Those will include quarterly reports of employees in positions at various blue collar and white collar grade levels, broken down by sex and minority status, by department/agency. Once each year, a report will be made showing turnover and anticipated position vacancies. When available, the 1980 Census reports will be used for further determination of EEO inequities.

EEO/AA is a living program, and changes with new information or as the program succeeds in reaching its goals. The computer reports, continuously updated, are attached to and become a part of this plan.

2. Goal setting:

As each computer printout is received and studied; specific goals will be made or changed to reflect realistic assessments of need and response. In most cases, the goals will be reflected in the far-right-hand column of the

“status of women and minorities” quarterly report.

B. Steps to overcome inequities recruitment:

Recognizing that upgrading, transfers, training, and recruitment efforts are the means by which the Affirmative Action Plan can be implemented with significant and immediate results, the recruiting and training staff of the office of manpower resources is to consider and utilize first all available minority applicants, as recognized by the statutory preference given to American Samoans and United States nationals. “American Samoans” are those persons defined or described in 41.502(b) and 41.0640 A.S.C.A. “Permanent residents” as defined or recognized by 41.0502(j), 41.0602, 41.0603, 41.0604, and 41.0616 A.S.C.A., have the same rights as American Samoans for this purpose. “United States Nationals” are defined in Section 1408 of Title 8 of the United States Code.

In addition, it shall also be the concern of all staff’ recruiters and personnel administrators to give special attention to recruitment of women in positions where, in the judgment of the director of manpower resources, there is a need to utilize and expand the female work-force. This policy is in accordance with the federal equal employment opportunity laws and the related federal Executive Order 11246, as amended by 11375.

C.

1. Development of contracts;

- a. Attend community meetings to explain policy and objectives.
- b. Visit high schools, the American Samoa Community College and Skill Center at normal recruiting period and during these visits emphasis shall be placed on ASG as being an equal opportunity employer.
- c. Participate in local career days at all schools and the community college.
- d. Discuss ASG employment needs and policy with community organizations.
- e. Distribute letters to schools and organization expressing interest in referral

of qualified candidates for specific job opportunities.

2. Encouragement of job applicants:

a. Include on all recruitment advertising:

“Equal Employment Opportunity Employer. However, where positions can be filled locally, preference shall be given to American Samoans, United States Nationals and permanent residents of American Samoa.”

b. Post promotional opportunities and encourage the widest range of applicants within agency level, local education and community resources.

c. Publicize examples of minorities employed in nontraditional occupations.

d. Publicize Samoanization of workforce.

3. Selection:

Screening of applicants is the responsibility of the office of manpower resources through review of applications, testing and interviewing. The five top candidates are referred to hiring agency for interview. Final selection is the responsibility of the hiring department/agency lie ad.

4. Examinations:

The definition of examinations includes the process from review of applications to final determination of eligibility. While an evaluation of all tests used in selection is not feasible at the present time, the following actions shall be taken to avoid discrimination and to acquire pertinent statistics for use in any future evaluation:

a. Eliminate from the actual application form all questions which tend to be discriminatory such as reference to sex, marital status, except for that information which is necessary for the affirmative action program.

b. For written tests, keep a record of the success of minority group members in taking tests.

c. The office of manpower resources should notify the department/agency head if in its judgment the experience requirements or the tests are unnecessarily restricting in selection for employment or promotion or why they feel that the tests are not job related.

5. Counseling:

a. Provide career counseling to present and prospective employees and point out promotional opportunities, career ladders, and training opportunities and programs.

b. Counsel applicants on possible actions to improve their opportunity for future employment.

6. Appointment:

a. The hiring agency making final selection shall interview as objectively as possible all persons certified to them by the office of manpower resources of applicants not selected and to document reasons for nonselection.

Via the Secretary of Samoan affairs, department of local government, ASG, through the applicant’s village pulenu’u (village mayor) at his or her last known address, the nonselected applicant will be notified in writing of the decision and inform them of their right to request a hearing by the personnel advisory board if he or she feels that the nonselection was discriminatory.

b. Hearings will follow the format outlined in Part 385.82 of the ASG Personnel Administration Manual.

7. Lateral entry:

a. Develop guidelines for recognizing previous experience of new employees including a policy for employment at higher than the normal entrance salary.

b. Continue efforts to provide intra- and inter-department mobility through intragovernmental advertising.

8. Training:

It is the policy of ASG to provide job training and employment opportunities for all residents of the territory, particularly for the unemployed or underemployed persons, and to ensure that training and placement services will lead to maximum employment and self-sufficiency in the skills which are essential to a developing community.

- a. Encourage minority employees to participate in education and on-the-job training courses given by ASG, the American Samoa Community College, and the Skill Center.
- b. Encourage employees to take courses that are job-related. Especially encourage educational programs for the completion of high school courses and training in skilled trades.
- c. Select employees for in-service training on a nondiscriminatory basis.
- d. Organize additional training courses for upgrading the skills of employees.
- e. For future evaluation purposes, record the participation rates of minorities in training courses and their use of education leave and educational opportunities.
- f. Include information regarding the Affirmative Action Plan in all training and orientation programs at all levels, especially training sessions for supervisors.
- g. Encourage supervisors to utilize the orientation interview to describe the Affirmative Action Plan and career opportunities.

9. Career ladders and promotion:

- a. Post promotional opportunities and encourage the widest range of applicants, i.e., local education and community resources.
- b. On an individual basis, counsel employees on their probable career ladder.

- c. Annually rate employees on their promotional potential and provide career and training counseling.
- d. Consider restructuring jobs to provide promotional opportunity for semiskilled employees.
- e. Encourage departments/agency heads to notify the supervisors of minority and women staff members who have significant promotional potentials so that the supervisors can recommend they apply for vacancies at a higher level.

10. Specifics relative to third-party relationships:

- a. All nonfederal or nonfederally assisted projects-contractors, subcontractors, developers, consultants, appraisers, and other technical specialists-will be informed by ASG that anyone seeking a contract with ASG must undertake a program of equal employment opportunity. Any company or individual discriminating in his/her employment practices on the basis of race, creed, color, religion, sex, or national origin, will not be eligible for contracts with ASG. It will be the responsibility of the EEOCO to monitor these procedures and activities for compliance, and to undertake any necessary corrective measures. The actions and guidelines contained in this policy shall be applicable also to all third parties involved in the project.
- b. ASG's obligation under federal requirements shall be with reference to Title VI of the Civil Rights Act of 1964, § 808 of the Civil Rights Act of 1968; and Executive Orders 11063, 11246, 11375, and 11376 § 109 of the HUD Act of 1974, and § 3 of the HUD Act of 1968, and such other supplements to the basic Civil Rights Act and Housing Acts regarding equal employment opportunity.
- c. Review and monitor all contract developments to ensure achievement of equal employment opportunity, open occupancy, and public accommodation objectives; conduct on-site inspections, at

regular intervals, of employment, occupancy, and accommodation practices.

- d. The EEOCO will be responsible for reviewing the adequacy of the affirmative program submittals, the monitoring for compliance with the provisions in the program, and for undertaking all necessary corrective action.

11. In-house program:

Employment, promotion, demotion, or reassignment; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship; shall be done in accordance with the rules and regulations as prescribed in the ASG Personnel Administration Manual.

It is the purpose of the Personnel Administration Manual to establish a system of personnel administration based on merit principles and scientific methods governing the classification of positions and the employment conduct, movement, and separation of public officers and employees.

It is also the purpose of the Personnel Administration Manual to build a career service in ASG which will attract, select, and retain the best of our citizens on merit, free from coercive political influences, with incentives in the form of genuine opportunities for promotions in the service, which will eliminate unnecessary and inefficient employees, which will provide technically competent and loyal personnel to render such service according to the dictates of ethics and morality.

D. Evaluation and reporting:

- 1. Data shall be compiled for each department or agency every 3 months, indicating the number and percentages of employees in each department by sex, minority status and pay, as shown in A, Determination of inequities.
- 2. A summary and evaluation of the above data shall be prepared for distribution to the

Governor, office of manpower resources, and the EEO.

- 3. The director of manpower resources shall report to departments and agencies if any problems are encountered and to propose recommendation on the implementation of this plan.

E. Grievances and appeals:

Grievances and appeals resulting from the implementation of this plan shall be handled in accordance with the procedures outlined in Part 385.8 of the ASG Personnel Administration Manual.

TITLE 4 - CHAPTER 12 – DEVELOPMENT AND TRAINING

Sections:

- 4.1201 Purpose.
 - 4.1202 Manpower Resources Responsibility-Individual Responsibility.
 - 4.1203 Governor’s Committee-Departmental Committees.
 - 4.1204 Scope of Activities.
 - 4.1205 Records-Reports-Expenditures.
-

4.1201 Purpose.

The ASG has an obligation to the citizens of the territory to utilize and develop the talents and abilities of each employee to the maximum extent. It is therefore necessary to establish and operate programs in order to:

- (1) improve public service;
- (2) increase efficiency and economy;
- (3) build and retain a work force of skilled and efficient employees;
- (4) install and use the best modern practices and techniques in the conduct of government business.

History: Rule 10-81. eff 29 Jul 81. § 12.1.

4.1202 Manpower Resources Responsibility-Individual Responsibility.

- (a) Director, office of manpower resources:

(1) is responsible for administering the ASG personnel program and for providing full support for and maintenance of the ASG employee development and training activities;

(2) will provide technical advice and assistance in the development of the departmental annual employee development and training plans.

These annual departmental plans will be reviewed and used as a basis for developing the government-wide employee development and training program;

(3) will review departmental plans prior to the presentation of the annual budget and develop his recommendation of training programs for inclusion in the development and training plan. Upon the Governor’s approval of the ASG training plan, the departmental training program shall be incorporated into the department’s annual budget.

(b) Individual’s responsibility: Because training and development is an individual matter, one that must be accepted and recognized by the person concerned in order to be of any benefit, each employee is, therefore, responsible both to himself and the government service for his personal development and growth.

History: Rule 10-81, eff 29 Jul 81, § 12.2.

4.1203 Governor’s Committee-Departmental Committees.

(a) The Governor’s employee development and training advisory committee will consist of representatives from each governmental agency and top state officials appointed by the Governor. The director, office of manpower resources will be the Governor’s representative and preside as chairperson. The committee will advise in the development of policies, procedures, and training programs and will provide a direct communication channel for departments to the office of manpower resources.

(b) The departmental employee development and training committees will consist of appropriate representation within a department and would operate in a similar manner to the Governor’s employee development and training advisory committee except at the departmental level.

History: Rule 10-81, eff 29 Jul 81, § 12.3.

4.1204 Scope of Activities.

Agencies, in establishing their employee development and training plans, are to include but not be limited to the following:

(a) Induction Training. Induction training consists of two phases:

(1) Orientation training: Orientation training will be given each new employee upon entry to give him an understanding of the department, its policies, objectives, programs, functions, and organizational structure, basic laws affecting departmental operations, and the relationship of his job to the overall organization.

(2) Basic job training: The immediate supervisor is responsible for providing to a new employee or an employee transferred into another job the basic knowledge of his job, including work standards, and to assist him in acquiring the skills, techniques, work habits, an attitude essential for satisfactory work performance.

(b) Refresher Job Training. This training is provided to bring employees up to date on information in an occupation in which they had been previously trained and to brush up on skills that have become “rusty” through disuse or improper use.

(c) New Activities, Procedures, Laws, Policies.

(1) Whenever new activities or procedures in work methods are instituted, agencies will provide orientation to the activity or procedure and adequate instructions to employees in performing the new activity before effecting the changeover. Such orientation and instructions will be given to all employees involved, to effect the change with a minimum of work disruptions and to

facilitate transition to the new setup from both the standpoint of management and the employees.

- (2) Whenever changes to existing laws or whenever new laws, policies, and rules are made, agencies will provide the means for informing all management personnel, including supervisors and such other persons as are affected, of these changes.
- (d) Management Development Activities (Supervisors).
- (1) Basic supervisory training: Departments shall enroll all supervisors in the office of manpower resources basic supervisory training program within 6 months of their appointment. This program will cover the basic skills, knowledge, and attitudes necessary for the efficient performance of their managerial and operational responsibilities. Each newly appointed supervisor shall be enrolled in this basic supervisory program within 6 months of his appointment.
 - (2) Advanced supervisory training: A supervisory development activity of an advanced and continuing nature shall be established to further assist administrative and supervisory personnel in keeping up with new developments in management, supervisory, and human relations techniques.
- (e) Methods Improvement Activity (Work Simplification). This training is provided to assure a systematic plan for developing better operating methods through the cooperative efforts of management and employees in recognizing, stimulating, and using the common sense and imagination of all employees and supervisors to produce valuable ideas for effecting economy and developing better methods for getting work done in the easiest, simplest, and fastest way possible.
- (f) Self-Development Activities. This training provides employees with the means for self-improvement in developing essential knowledge, skills, and attitudes, and individual

potential for career service through voluntary participation in government-sponsored and agency-sponsored activities both within and without the government service.

- (g) Special Purpose Activities. This training provides for meeting the needs imposed by technological improvements or employment displacement, changes in public service requirements, civil defense matters, legislation, or conditions, usually of a nonrecurring nature. Included in this category are:

- (1) internship training activity, a formalized activity of related academic study and on-the-job instruction designed to develop outstanding individuals to meet the employment needs of the government and to upgrade the quality of public service through improved personnel effectiveness;
- (2) training agreements, which provide agencies with the means for obtaining qualified personnel to carry out the agency's mission when there are no other available resources through which these qualified personnel could be obtained. They are formal agreements between the office of manpower resources and a government agency whereby the OMR will accept certain agency-sponsored training as a means of supplementing the employee's present qualifications.

- (h) Out-service Training. This provision permits agencies to send their employees to nongovernment facilities for needed training which is not available within the government's jurisdiction and to pay all or any part of the expenses of such training. The training may be full time, part time, on duty or off duty, day or evening, or any necessary combination of these, provided the training is of primary benefit to the government service.

History: Rule 10-81, eff 29 Jul 81, § 12.4.

4.1205 Records-Reports-Expenditures.

- (a) Records.

- (1) Basic records: Agencies will establish necessary records for employee development and training.
 - (2) Letters of completion: Departments will prepare, for documentation in official personnel jackets, letters of completion for individuals completing satisfactorily any approved employee development and training activity. The letter will include the following information:
 - (A) Title of course,
 - (B) Hours of training received;
 - (C) A brief outline of subject matter covered;
 - (D) Dates of attendance;
 - (E) Where and by whom sponsored if other than home department.
 - (3) Training certificate: The office of manpower resources will issue training certificates to employees completing satisfactorily any endorsed employee development and training activity with 20 or more hours of instruction time. In order for the OMR to endorse such activities, agencies must advise the department of their employee development and training activities through submission of their employee development and training plans and of any additions or amendments to them.
- (b) Reporting Requirements. A system of reporting is necessary to give meaningful information which will assist management in assessing the past and in planning the future activities and to funnel in the necessary data from departmental units to the OMR, which is responsible for preparing a master employee development and training report for the Governor. Departments will submit consolidated semi-annual reports to the OMR by the tenth working day following the end of each semiannual period. The OMR will submit the government-wide semiannual employee development and training report to the Governor by the fifteenth working day following the end of each period.
- (c) Expenditures.
 - (1) For items in the annual departmental employee development and training plan requiring expenditure of funds for which appropriations have been included in the department's operating budget:
 - (A) In-service training: An invoice for expenditure of funds will be completed and processed according to the ASG standard operating procedure.
 - (B) Out-service training: An invoice for expenditure of funds will be completed and processed according to the ASG standard operating procedure.
 - (2) For items requiring departmental expenditure of funds above and beyond those covered in the operating budget:
 - (a) In-service Training: Training using resources and facilities outside the agency but within the jurisdiction of the ASG and involving expenses for which funds have not been included in the departmental annual training budget will be submitted for prior approval to the director.
 - (b) Out-service Training: Training using resources and facilities outside of the jurisdiction of the ASG will be submitted for prior approval to the director.
 - (3) Blanket approval for statewide expenditure of funds: In situations relating to specific employee development and training activities where the office of manpower resources has received blanket approval or authority from the Governor for the expenditure of funds, it will coordinate attendance at these activities.

History: Rule 10-81, eff 29 Jul 81, § 12.5.

TITLE 4 - CHAPTER 13 – TRAVEL

Sections:

- 4.1310 Per diem allowance-Intraterritorial Travel-Authority of provisions.
- 4.1311 Per diem allowance-Intraterritorial Travel-Rate-Limitation.

4.1310 Per Diem Allowance-Intraterritorial Travel-Authority of Provisions.

The rule codified in this section and 4.1311 is adopted under the authority of 7.1002 A.S.C.A., and the delegation under 4.0131 A.S.C.A., of the rulemaking authority, vested in the director of manpower resources therein to the director of administrative services.

History: Rule 18-80. eff 3 Sep 80, § 1.

4.1311 Per Diem Allowance-Intraterritorial Travel-Rate-Limitation.

- (a) Effective 14 July 80 the per diem rate for travel on temporary official business away from a permanent duty station in the territory by an employee of the ASG between the island of Tutuila, the Manu’a group of islands and Swains Island is \$40 per day.
- (b) To be entitled to the full per diem, the employee must stay overnight and provide, with his travel expense report, a receipt evidencing that he stayed in a duly licensed accommodation facility. If such evidence is not presented or if the employee does not stay overnight, the employee is entitled to only 50% of the per diem rate.
- (c) This section is inapplicable to government employees whose temporary duty assignments are specifically covered by 4.0413 or 4.0414.

History: Rule 18-80. eff 3 Sep 80, § 2; and Rule 11-8, eff 6 Oct 88, § 3.

TITLE 4 - CHAPTER 14 – TERRITORY OF AMERICAN SAMOA DEFERRED COMPENSATION PLAN

Sections:

- I. GENERAL PROVISIONS*
- 4.1401 Purpose.
- 4.1402 Definitions.

- 4.1403 Office of The Board.
- 4.1404 Appearances Before the Board.
- 4.1405 Public Records and Information.

II. ADOPTION, AMENDMENT, OR REPEAL OF RULES

- 4.1406 Petition.
- 4.1407 Form of Petition.
- 4.1408 Rulemaking.

III. DECLARATORY RULING

- 4.1409 Petition.
- 4.1410 Form of Petition.
- 4.1411 Nonissuance of Declaratory Order.
- 4.1412 Disposition of Petition
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- 4.1414 Eligibility Requirements.
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- 4.1436 Normal Retirement Age Defined-Designation.
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- 4.1440 Beneficiaries: Designation-Rights.
- 4.1441 Withholding of Taxes.
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- 4.1443 Request for Emergency Withdrawal-Form.
- 4.1444 Unforeseeable Emergency Defined.
- 4.1445 Limitations on Withdrawals.
- 4.1446 Payment-Board Approval.
- G. Board Review of Administrator's Actions*
- 4.1447 Request for Board Review.
- 4.1448 Disposition of Request.

I. GENERAL PROVISIONS

4.1401 Purpose.

Chapter 15. Title 7. Section 7.1502 A.S.C.A., authorizes the board of trustees of the Territory of American Samoa deferred compensation plan to establish the Territory of American Samoa deferred compensation plan. Chapter 14 Title 4, Administrative Rules, is adopted by the board to implement administration of the plan.

History: Rule 11-87, eff 17 Jun 87.

4.1402 Definitions.

As used in this chapter unless the context clearly requires otherwise:

- (1) “Administrator” means the company or persons engaged by the board to administer and maintain the plan under the direction of the board.
- (2) “Beneficiary” means a person designated by a participant, a participant’s estate or any person whose rights under the plan are derived as a result of the participants death.

- (3) “Board” means the board of trustees of the Territory of American Samoa deferred compensation plan created pursuant to 7.1502 A.S.C.A.
- (4) “Employee” means persons employed by the Government of American Samoa in all occupational classifications.
- (5) “Employer” means the Government of the Territory of American Samoa.
- (6) “Participant” means an employee who enters into a written agreement with the employer to defer compensation under the plan.
- (7) “Participation agreement” means the written agreement between an employee and employer to have compensation withheld each pay period and invested by the board.
- (8) “Plan” means the Territory of American Samoa deferred compensation plan established in accordance with 7.150 1 A.S.C.A., and. Section 457 of the Internal Revenue Code, 26 U.S.C. Section 457.

History: Rule 11-87. eff 17 Jun 87.

4.1403 Office of the Board.

The office of the board is located at the Office of Manpower Resources, Utulei, American Samoa.

History: Rule 11-87. eff 17 Jun 87.

4.1404 Appearances Before the Board.

A party to a proceeding before the board may appear in person or may be represented by or with counsel or other person chosen as a representative. The board at any time may require evidence of authority and qualification to act in a representative capacity.

History: Rule 11-87, eff 17 Jun 87.

4.1405 Public Records and Information.

- (a) The term “public record,” as used in this chapter, shall be defined as in 4.1101, et seq., A.S.C.A.
- (b) All public records shall be available for inspection in the office of the board during established office hours, in accordance with 4.1105 A.S.C.A.

- (c) Public records printed or reproduced by the board shall be made available to any person in accordance with 4.1105 A.S.C.A.

History: Rule 11-87. eff 17 Jun 87.

II. ADOPTION, AMENDMENT, OR REPEAL OF RULES

4.1406 Petition.

An interested person may petition the board for the adoption, amendment, or repeal of any rule of the board. The petition shall be submitted in duplicate and filed with the board:

History: Rule 11-87. eff 17 Jun 87.

4.1407 Form of Petition.

- (a) The petition need not be in any special form but shall contain:
- (1) the petitioner's name, address, zip code, and telephone number;
 - (2) a statement of the nature of the petitioner's interest;
 - (3) an explicit statement of the reasons in support of the proposed rule, amendment, or repeal;
 - (4) a draft of the substance of the proposed rule, amendment, or repeal and the designation of any existing rules affected by the petition: and
 - (5) the signature of the petitioner.
- (b) A petition which does not conform to the foregoing requirements may be rejected by the board. The petitioner shall be notified in writing.

History: Rule 11-87. eff 17 Jun 87.

4.1408 Rulemaking.

The board at any time, on its own initiative, may institute proceedings in accordance with 7.1503 A.S.C.A., for the adoption, amendment, or repeal of rules.

History: Rule 11-87, eff 17 Jun 87

III. DECLARATORY RULING

4.1409 Petition.

An interested person may petition the board for a declaratory order as to the applicability of any statutory provision administered by the board or any rule or order of the board. The petition shall be submitted in duplicate and filed with the board.

History: Rule 11-87. eff 17 Jun 87.

4.1410 Form of Petition.

- (a) The petition need not be in any special form but shall contain:
- (1) the petitioner's name, address, zip code, and telephone number;
 - (2) a statement of the nature of the petitioner's interest;
 - (3) a designation of the specific statutory provision, rule, or order in question;
 - (4) a complete statement of the relevant facts;
 - (5) a statement of the interpretation given the statutory provision, rule, or order by the petitioner;
 - (6) a memorandum containing the reasons, including any legal authorities, in support of the interpretation of the petitioner; and (7) the petitioner's signature.
- (b) A petition which does not conform to the foregoing requirements may be rejected by the board. The petitioner shall be notified in writing of the rejection.

History: Rule 11-87. eff 17 Jun 87.

4.1411 Non-issuance of Declaratory Order.

The board, for good cause, may refuse to issue a declaratory order. Without limiting the general application of the foregoing, the board may so refuse where:

- (a) the question is speculative or purely hypothetical and does not involve an existing situation or a situation which may reasonably be expected to occur in the near future;
- (b) the petitioner's interest is not of the type which confers sufficient standing to maintain an action in a court of law;

- (c) the issuance of the declaratory order may adversely affect the interest of the Territory the board, or any officer or employee of the territory involving in pending litigation or litigation which may reasonably be expected to arise; or
- (d) the petition requests a ruling on a statutory provision not administered by the board or the matter is not otherwise within the jurisdiction of the board.

History: Rule 11-87. eff 17 Jun 87.

4.1412 Disposition of Petition.

Within a reasonable time after the submission of the petition, the board shall either deny the petition in writing, stating its reasons for the denial, or issue a declaratory ruling on the matters contained in the petition. Upon disposition of the petition, the board shall promptly notify the petitioner of the board’s ruling.

History: Rule 11-87. eff 17 Jun 87.

4.1413 Applicability of Orders.

An order disposing of a petition shall be applicable only to the fact situation alleged in the petition or as set forth in the order. The order shall not be applicable to different fact situations or to situations where additional facts not considered in the order exists.

History: Rule 11-47, eff 17 Jun 87.

IV. PLAN PROVISIONS
A. ENROLLMENT

4.1414 Eligibility Requirements.

A person shall be eligible to enroll in the plan if the person is employed by the Government of the Territory of American Samoa as defined in 7.1403(f) A.S.C.A.

History: Rule 11-87. eff 17 Jun 87.

4.1415 Application for Enrollment.

- (a) An application for enrollment shall be made on the participation agreement form prescribed by the board and shall be filed with the administrator.
- (b) An applicant for enrollment shall enter on the participation agreement form the following:

- (1) identifying information, including name, social security number, date of birth, home address, and home telephone number;
- (2) employment information, including employer, department, division, business telephone number, and annual salary;
- (3) designations allowed under the plan, including investment preference, amount of compensation to be deferred per pay period per investment product, normal retirement age, and beneficiary; and
- (4) signature to indicate that the applicant:
 - (A) agrees to the provisions of the plan, which are incorporated by reference;
 - (B) authorizes disclosure of any information necessary for administration of the plan; and
 - (C) certifies that the information furnished on the form is true and correct to the best of the applicant’s knowledge and belief.

History: Rule 11-87, eff 17 Jun 87.

4.1416 Acceptance-Effective Date.

- (a) The participation agreement shall be effective upon acceptance by the board and shall remain in effect unless it is modified by the participant.
- (b) The administrator shall give each participant a copy of the participation agreement which has been accepted by the board.

History: Rule 11-87. eff 17 Jun 87.

4.1417 Rejection-Notification.

- (a) A participation agreement shall be rejected if:
 - (1) the participation agreement is incomplete;
 - (2) an entry in the participation agreement is inconsistent with the plan or this chapter; or
 - (3) the applicant does not meet the eligibility requirements.
- (b) If a participation agreement is rejected, the administrator shall promptly notify the applicant

in writing of the rejection and the reason for the rejection.

History: Rule 11-87. eff 17 Jun 87.

4.1418 Changes in Participation Agreement.

- (a) It shall be the responsibility of a participant to notify the administrator in writing of any change in an entry on the participation agreement.
- (b) Upon receipt of a notification of change, the administrator shall promptly inform the participant whether the change required:
 - (1) an amended participation agreement to be filed and accepted by the board or
 - (2) proof of documentation to substantiate the change.
- (c) The administrator shall make the change as soon as practicable following the receipt of a notification of change.
- (d) If a change would be inconsistent with the plan or this chapter, the administrator shall promptly notify the participant in writing that the change cannot be made and the reason why it cannot be made.

History: Rule 11-87, eff 17 Jun 87.

4.1419 Reenrollment.

A former participant may again apply for enrollment in the plan by filing a participation agreement with the administrator.

History: Rule 11-87. eff 17 Jun 87.

B. DEFERRALS

4.1420 Deferrals Allowed-Authorization-Commencement.

- (a) Only compensation from an employer which has not yet been paid shall be deferred under the plan.
- (b) Upon receipt of a payroll authorization form signed by the participant, which designates the amount of compensation to be deferred, compensation shall be deferred each payroll date by the employer, provided there are sufficient funds to make the designated deferral. The authorization form shall be transmitted by the

administrator to the territorial comptroller. (c) Deferrals shall commence as soon as practicable, but not earlier than the first day of the next calendar month following the date on which the board accepts the participation agreement.

History: Rule 11-87. eff 17 Jun 87.

4.1421 Limitations on Amounts Deferred.

- (a) The minimum amount of deferral per pay period shall be \$10 per investment product.
- (b) The maximum amount of deferral per taxable year of the participant shall be 33 1/3 percent of a participant's includable compensation (as defined in regulations governing Section 457 of the Internal Revenue Code, 26 U.S.C. § 457), but not more than \$7,500, except, as provided in 4.1422.

History: Rule 11-87. eff 17 Jun 87.

4.1422 Catch-up Provision.

- (a) During 1 or more of a participant's last 3 taxable years ending before the participant attains normal retirement age, as defined in 4.1436, a participant may be eligible to defer compensation in excess of the limitation under 4.1421(b) as follows:
 - (1) the maximum amount of deferral for each taxable year of the catch-up period shall be the sum of the underutilized limitation under 4.1422(a)(2), but not more than \$15,000;
 - (2) the underutilized limitation shall be computed by adding:
 - (A) the maximum amount of deferral under 4.1421(b) for the taxable year; and
 - (B) the amount which a participant could have deferred but did not defer (which is the maximum amount under 4.1421(b) less any amount previously deferred) in prior taxable years which the participant was eligible to participate in the plan or another eligible plan (within the meaning of Section 457 of the Internal Revenue Code, 26 U.S.C. § 457); and

(3) a participant shall only be eligible to utilize the catch-up provision once, regardless of whether the participant fully utilizes the provision or rejoins the plan.

(b) A participant shall not be eligible to utilize the catch-up provision under the plan if the participant has utilized a catch-up provision under another eligible plan.

History: Rule 11-87, eff 17 Jun 87.

4.1423 Reduction in Maximum Amounts Allowable.

The, maximum amounts allowable under 4.1421(b) and 4.1422 shall be reduced in accordance with regulations governing Section 457 of the Internal Revenue Code, 26 U.S.C. § 457 if a participant is deferring or has deferred compensation under another eligible plan or annuity plan under Section 403(b) of the Internal Revenue Code, 26 U.S.C. § 403(b).

History: Rule 11-87, eff 17 Jun 87.

4.1424 Responsibilities Regarding Maximum Amounts.

(a) It shall be the responsibility of a participant to furnish the administrator with all necessary information so that deferrals under the plan do not exceed the maximum amounts allowable under 4.1421(b), 4.1422, and 4.1423.

History: Rule 11-87, eff 17 Jun 87.

4.1425 Insufficient Funds-Suspension-Reinstatement.

(a) Whenever there are insufficient funds available to make the deferral designated in the participation agreement, the deferral shall not be made.

(b) Deferrals shall automatically be suspended if there are insufficient funds available to make the designated deferral for 6 consecutive pay periods.

(c) A participant whose deferrals have been suspended shall file a written request with the administrator to have deferrals reinstated on the same terms contained in the participation agreement prior to the suspension. However, if the desired reinstatement is to be on terms other

than those contained in the participation agreement, a participant shall file an amended participation agreement, which shall be subject to acceptance by the board.

History: Rule 11-87 eff 17 Jun 87.

4.1426 Deferrals Remain as Employer's Assets.

(a) The amounts deferred under the plan by a participant, including income attributable to the investment of the amounts deferred, shall remain an asset of the participant's employer.

(b) When a participant changes employment from one employer to another employer under the plan, the amounts deferred by the participant, including income attributable to the investment of the amounts deferred, shall become an asset of the new employer.

(c) A participant's rights to the amounts deferred shall be limited to those provided in the plan and this chapter.

History: Rule 11-87, eff 17 Jun 87.

C. INVESTMENTS

4.1427 Investments of Deferred Amounts.

(a) The amounts deferred under the plan shall be invested by the board in fixed annuities, variable annuities, life insurance, savings account or mutual funds, or any combination of the foregoing.

(b) Contracts entered into between the board and the companies selected by the board to offer the investment products for the plan shall be binding upon the participants.

History: Rule 11-87, eff 17 Jun 87.

4.1428 Designation of Investment Preference.

(a) A participant shall designate a preference for the investment of amounts deferred from among the available investment products under the plan in the participation agreement.

(b) A participant may change a designation of an investment preference with respect to prospective deferrals by filing an amended

participation agreement, which shall be subject to acceptance by the board.

- (c) Investment of deferred amounts shall be made in accordance with the participants' designated preferences unless otherwise directed by the board for good cause, such as, circumstances which necessitate an immediate safeguarding of deferred amounts. Whenever deferred amounts are not invested in accordance with this participants designation preferences, all affected participants shall be advised by the administrator in writing of the action taken by the board and the reason for the action.

History: Rule 11-87. eff 17 Jun 87.

4.1429 **Transfer of Amounts Previously Deferred.**

A participant may submit a written request to the administrator to transfer amounts previously deferred under the plan from one investment product to another investment product available under the plan. However, the transfer shall only be allowed in accordance with the provisions of the contracts pertaining to the applicable investment products.

History: Rule 11-87 eff 17 Jun 87.

D. **ACCOUNTS AND REPORTS**

4.1430 **Individual Accounts.**

Individual deferred compensation accounts shall be established and maintained for each participant as necessary for record-keeping and reporting purposes.

History: Rule 11-87, eff 17 Jun 87.

4.1431 **Adjustments to Accounts.**

Each individual account shall be credited with the amount of compensation deferred and shall be further adjusted by any increase or decrease resulting from investments, any direct-charge authorized in the applicable investment product contract, and any withdrawal or payment of benefits authorized by the board.

History: Rule 11-47. eff 17 Jun 87.

4.1432 **Reports on Accounts.**

Each participant shall be provided semiannually with a written report of any account maintained on behalf

of the participant. The report shall be mailed to the participant's last home address on file with the administrator, unless otherwise requested in writing.

History: Rule 11-87. eff 17 Jun 87.

4.1433 **Disclosure of Information.**

Information about a participant shall only be disclosed to the participant or a person authorized in writing by the participant, unless otherwise authorized by law.

History: Rule 11-87, eff 17 Jun 81.

E. **DISTRIBUTION OF BENEFITS**

4.1434 **When payable-Earliest and latest dates.**

- (a) Benefits under the plan shall be paid or made available to the participant no earlier than:
- (1) separation from service when an employee is no longer employed by an employer under the plan due to termination, retirement, or death; or
 - (2) the occurrence of an unforeseeable emergency as provided in 4.1443 to 4.1446.
- (b) Payment of benefits shall commence no later than 60 days after the close of the calendar year in which the participant separates from service or the participant attains or would have attained normal retirement age as defined in 4.1436, whichever is later.

History: Rule 11-87. eff 17 Jun 87.

4.1435 **Distribution request form-Filing requirements.**

- (a) A completed distribution request form prescribed by the board shall be filed with the administrator upon separation from service. Additional information may be required by the board prior to approval of the request.
- (b) The following shall be entered on the form:
- (1) identifying information, including name, social security number, date of birth, home address, and home telephone number;
 - (2) date of and reason for separation from service;

- (3) whether the catch-up provision has been utilized;
 - (4) normal retirement age;
 - (5) payment option;
 - (6) commencement date of payments: and
 - (7) signature authorizing proper withholding of taxes and certifying the information is true and correct to the best of the person's knowledge and belief.
- (c) The form shall be filed no later than 30 days after the close of the calendar year in which the separation from service occurs.
- (d) In the event a distribution request form is not filed within the prescribed time or is otherwise rendered ineffective by the plan or this chapter, benefits shall be paid in accordance with 4.1439.

History: Rule 11-87. eff 17 Jun 87.

**4.1436 Normal Retirement Age Defined-
Designation.**

- (a) Normal retirement age means any age, at the option of the participant that is within the range of ages:
- (1) beginning no earlier than the earliest age at which the participant has the right to retire under the employees' retirement system and to receive immediate benefits without reduction; and
 - (2) ending not later than age 70 1/2. However, if a participant continues to work beyond the specified ages, normal retirement age shall not be later than the mandatory retirement age applicable to the participant or the date the participant separates from service with the employer.
- (b) The participant shall designate a normal retirement age on the participation agreement or distribution request forms. In the absence of a designation, normal retirement age shall be age 65.

History: Rule 11-87. eff 17 Jun 87.

4.1437 Election to Commence Benefits.

- (a) Upon separation from service, but not later than 30 days after the close of the calendar year in which the participant separates from service, an irrevocable election may be made to have benefits commence at a fixed future time. The designation shall be made on a distribution request form and filed with the administrator.
- (b) In the absence of an election within the prescribed time, benefits shall be paid in accordance with 4.1439.

History: Rule 11-87. eff 17 Jun 87.

4.1438 Selection of Payment Options.

- (a) The payment of benefits under the plan shall be made primarily for the benefit of the participant.
- (b) A method for payment of benefits shall be designated on the distribution request form from among the options available under the applicable investment product contracts, which may include:
- (1) fixed payments over a period of time;
 - (2) annuity payments and
 - (3) lump sum payment.
- (c) The designation of the method for payment of benefits is irrevocable, unless modified at least 30 days prior to the date benefits are to commence.
- (d) In the absence of a designation within the prescribed time, benefits shall be paid in accordance with 4.1439.

History: Rule 11-87. eff 17 Jun 87.

4.1439 Failure to Select Distribution Options.

- (a) In the event a distribution request form is not filed or an election to commence payments is not made in accordance with these rules, benefits shall be paid when the participant attains or would have attained normal retirement age, except as specified in 4.1438(b)(1).
- (b) In the event a method for payment of benefits is not designated in accordance with this chapter, benefits shall be paid as follows:

- (1) for an account valued at less than \$5,000, immediately and in a lump sum; and
- (2) for an account valued at \$5,000 or greater, in 5 equal annual installments.

History: Rule 11-87. eff 17 Jun 87.

4.1440 Beneficiaries; Designation-Rights.

- (a) A participant shall designate on the participation agreement form a beneficiary or beneficiaries, who shall receive the participant's benefits in the event of the participant's death. In the event a beneficiary has not been designated or the designation is ineffective, the participant's estate shall become property of the participant's heirs.
- (b) Upon the participant's death, a beneficiary shall have all the rights of the participant, except as limited by regulations governing Section 457 of the Internal Revenue Code, 26 U.S.C. § 457.

History: Rule 11-87. eff 17 Jun 87.

4.1441 Withholding of Taxes.

All payments under the plan shall be subject to applicable tax withholding requirements.

History: Rule 11-87, eff 17 Jun 87.

4.1442 Mailing of Payments.

Payments shall be mailed to the last home address on file with the administrator, unless otherwise requested in writing.

History: Rule 11-87. eff 17 Jun 87.

F. UNFORESEEABLE EMERGENCY

4.1443 Request for Emergency Withdrawal-Form.

- (a) If a participant incurs an unforeseeable emergency as defined in 4.1444, the participant may apply for an emergency withdrawal by filing with the administrator a completed emergency withdrawal request form prescribed by the board, attaching evidence in support of the request. Additional evidence may be required by the board as necessary to dispose of the request.
- (b) A participant requesting an emergency withdrawal shall enter on the form the following:

- (1) identifying information, including name, home address, employing department, and work telephone number;
- (2) list of participant's assets;
- (3) specification of unforeseeable emergency;
- (4) detail of costs incurred or to be incurred;
- (5) whether the withdrawal results from an emergency affecting someone other than participant and, if so, whether that person is the participant's dependent;
- (6) amounts not payable by other sources;
- (7) amounts necessary to satisfy the emergency; and
- (8) signature authorizing proper withholding of taxes and certifying the information is true and correct to the best of the participant's knowledge and belief.

History: Rule 11-87. eff 17 Jun 87.

4.1444 Unforeseeable Emergency Defined.

An unforeseeable emergency means severe financial hardship to a participant resulting from a sudden and unexpected illness or accident of the participant or of the participant's dependent (as defined in Section 152(a) of the Internal Revenue Code, 26 U.S.C. § 152(a) loss of the participant's property due to casualty, or similar extraordinary circumstances beyond the participant's control.

History: Rule 11-87. eff 17 Jun 87.

4.1445 Limitations on Withdrawals.

An emergency withdrawal shall only be approved by the board to the extent that:

- (a) it is reasonably needed to satisfy the emergency; and
- (b) severe financial hardship cannot be relieved by:
 - (1) reimbursement or compensation from sources other than an emergency withdrawal under the plan;
 - (2) cessation of deferrals under the plan; and

- (3) liquidation of the participant’s assets, to the extent that the liquidation of assets would not in itself cause severe financial hardship.

History: Rule 11-87, eff 17 Jun 87.

4.1446 Payment-Board Approval.

- (a) Only emergency withdrawals which have been approved by the board shall be made under the plan.
- (b) Payments shall be made as directed by the board and shall include amounts which are required to be withheld for income tax purposes.
- (c) If an emergency withdrawal is not approved by the board, the administrator shall promptly notify the participant in writing of the disapproval and the reasons for the disapproval.

History: Rule 11-87, eff 17 Jun 87.

G. BOARD REVIEW OF ADMINISTRATOR’S ACTIONS

4.1447 Request for Board Review.

- (a) A board review may be requested by an employee regarding an action taken by the administrator, as it applies to the employee, which the employee believes is inconsistent with the plan or this chapter. The employee shall make reasonable efforts to resolve the disagreement with the administrator prior to requesting a board review.
- (b) All requests for board review shall be in writing and shall state the efforts taken to resolve the disagreement with the administrator, the specific reason why the action taken by the administrator is inconsistent with the plan or this chapter, the action requested, and the reason why the requested action is proper.
- (c) Requests for board review shall be filed within 30 calendar days of the date of the action taken by the administrator.

History: Rule 11-87, eff 17 Jun 87.

4.1448 Disposition of Request.

An employee’s request for a board review may be disposed of with or without an appearance before the

board. The employee shall be promptly notified by the board in writing of the results of its review.

History: Rule 11-87, eff 17 Jun 87.

TITLE 4 - CHAPTER 20 – ADMINISTRATION & GENERAL PROVISIONS

Sections:

- 4.2001 Applicability-Position Categories.
- 4.2002 Administration.
- 4.2003 Agency Head Responsibilities-Delegation.
- 4.2004 Investigative Authority.
- 4.2005 Enforcement Authority.
- 4.2006 Discrimination Prohibited.

4.2001 Applicability-Position Categories.

These regulations apply to all career service positions and employees. The ASPA personnel system is composed of career service positions and contract specialists. The objectives of the ASPA system of personnel administration are consistent with those of the ASG system, as described in 7.0201 A.S.C.A.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2002 Administration.

The Executive Director is responsible to the ASPA Board of Directors and the Governor for exercising leadership in and for the administration of all aspects of ASPA personnel management covered in these regulations. in accordance with appropriate ASPA, ASG and U.S., statutes and rules. The Director shall develop and promulgate rules, standards, and procedures designed to promote the efficiency of the agency service and to serve the needs of ASPA. The Director shall maintain a system of periodic review to determine that all rules relating to ‘his or her assigned responsibilities are being carried out. Whenever such review reveals failure on the part of any individual or department to comply with established policies, the Director will take such action as may be considered appropriate.

History: Rule 11-84, eff 19 Dec 84, (part).

**4.2003 Agency Head Responsibilities-
Delegation.**

- (a) The Executive Director is responsible for carrying out the basic personnel development and management requirements of ASPA. Included in this responsibility are:
- (1) Cooperation with the ASG Office of Manpower Resources as necessary and appropriate:
 - (2) Prompt notification to the Office of Manpower Resources of personnel actions to aid the Office of Manpower Resources in recordkeeping:
 - (3) Active, concerned leadership in assisting employees to carry out individual development plans:
 - (4) Prompt and accurate action in all hiring of new employees, promotions, transfers and disciplinary actions in conformance with these regulations:
 - (5) Ensuring that ASPA personnel practices comply with these regulations as well as territorial statutes governing public personnel administration:
 - (6) Ensuring that ASPA positions are filled by suitable and qualified applicants.
- (b) The training and technical aspects of personnel administration may be delegated to supervisors, trainers, and personnel officers, but the basic responsibility for overall personnel administration at ASPA remains with the Executive Director.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2004 Investigative Authority.

The Executive Director may cause investigations to be made as necessary to enforce Title 7 A.S.C.A., et seq. and other pertinent portions of law and the rules governing employment. This may include investigations into the qualifications and suitability of applicants for positions.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2005 Enforcement Authority.

Whenever an investigation indicates that any person has been appointed to, or is holding or performing the duties of, a position in violation of any of the laws and rules governing employment, the Executive Director is authorized, after giving due notice and opportunity for explanation, to certify the facts to the ASG treasurer, and thereafter no payment shall be made of salary or wages accruing to the employee in question.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2006 Discrimination Prohibited.

There shall be no discrimination in employment against any person on the basis of race, religious beliefs, color, age, sex, national origin, marital status, or physical and mental handicap, except for bona fide occupational or legal requirements.

History: Rule 11-84. eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 21 – DEFINITIONS

Sections:

- 4.2101 Applicability of definitions.
- 4.2102 Abandonment of position.
- 4.2103 Accrued leave.
- 4.2104 Accumulated leave.
- 4.2105 Acting appointment.
- 4.2106 Repealed.
- 4.2107 Agency.
- 4.2108 Annual leave.
- 4.2109 Appeal.
- 4.2110 Appointing authority.
- 4.2111 Apprenticeship.
- 4.2112 Areas of training.
- 4.2113 ASG.
- 4.2114 Assembled examination.
- 4.2115 ASPA.
- 4.2116 Basic salary rate.
- 4.2117 Basic Training.
- 4.2118 Board.
- 4.2119 Bumping.
- 4.2120 Career Service.
- 4.2121 Certificate of Eligibles.
- 4.2122 Certification.
- 4.2123 Chairman of The Board.
- 4.2124 Class.
- 4.2125 Compensatory Time.
- 4.2126 Competitive Personnel Action.
- 4.2127 Conference Leadership.

- 4.2128 Conflict of Interest.
- 4.2129 Contagious Disease.
- 4.2130 Contract Specialist.
- 4.2131 Cooperative Education Plan.
- 4.2132 Course of Study.
- 4.2133 Demotion.
- 4.2134 Department.
- 4.2135 Desirable Qualifications.
- 4.2136 Detail.
- 4.2137 Director.
- 4.2138 Disabled Veteran.
- 4.21124 Screening Committee.
- 4.21125 Selecting Authority.
- 4.21126 Selective Certification.
- 4.21127 Seminar.
- 4.21128 Sick Leave.
- 4.21129 Skill Training.
- 4.21130 Standard Workday.
- 4.21131 Standard Workweek.
- 4.21132 Supervisor.
- 4.21133 Suspension.
- 4.21134 Temporary Employment.
- 4.21135 Termination.
- 4.21136 Training Aids.
- 4.21137 Training Committee.
- 4.21138 Training Plan.
- 4.21139 Training Policy.
- 4.21140 Training Timetable.
- 4.21141 Transfer.
- 4.21142 Trial Service Period.
- 4.21143 Tuition.
- 4.21144 Unassembled Examination.
- 4.21145 Veteran.
- 4.21146 Work Simplification.

4.2101 Applicability of Definitions.

The definitions, set out in this chapter apply throughout these regulations, unless the context clearly indicates another meaning.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2102 Abandonment of Position.

“Abandonment of position” means failure of an employee to report for duty or to return from leave for five or more consecutive work days.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2103 Accrued Leave.

“Accrued leave” means leave earned by an employee during the current calendar year that is unused at any given time during that calendar year.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2104 Accumulated Leave.

“Accumulated leave” means unused leave remaining to the credit of an employee at the beginning of a new calendar year.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2105 Acting Appointment.

“Acting appointment” means a temporary appointment made to a supervisory or managerial position.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2106 Administrative Leave.

Repealed by Rule 7-87 § 3.

4.2107 Agency.

“Agency” refers to ASPA.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2108 Annual Leave.

“Annual leave” means authorized absence from duty with pay to allow employees a vacation period for rest and relaxation and to provide time off for personal and emergency purposes. The use of annual leave must be officially authorized prior to being taken.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2109 Appeal.

“Appeal” means a response by an individual to action taken against him or her. 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 these regulations.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2110 Appointing Authority.

“Appointing authority” means the person lawfully authorized to make appointments. The appointing authority for ASPA is the Executive Director.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2111 Apprenticeship.

“Apprenticeship” means a comprehensive program for training the learner toward a specialized trade or craft under the full responsibility of the employer and on a long-term basis. It includes thorough instruction in the principles and practices of the particular trade or craft as well as in academic and related subjects.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2112 Areas of Training.

“Areas of training” is a term used to include the training activities for certain classes of positions, such as clerical, skilled trades, and professional. and for programs of training such as orientation, supervision, and safety.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2113 ASG.

“ASG” means the American Samoa Government, as does “the government”.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2114 ASPA.

“ASPA” means the American Samoa Power Authority, as does “the agency”.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2115 Assembled Examination.

“Assembled examination” means an examination for which applicants are required to assemble or be physically present at an tip-pointed time and place.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2116 Basic Salary Rate.

“Basic salary rate” means the dollar amount of the step of the salary range to which the employee is entitled, before any deduction, and exclusive of additional compensation of any kind.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2117 Basic Training.

“Basic training”, as part of induction, means the fundamental or essential training required for a position.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2118 Board.

“Board” means the Board of Directors of the American Samoa Power Authority.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2119 Bumping.

“Bumping” means the replacement of an incumbent subject to reduction-in-force by another employee who has greater seniority.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2120 Career Service.

“Career service” means that system of personnel administration based on merit principles which provides for the attraction, selection, and retention of the best-qualified persons for permanent employment. Entry is normally through competitive examination, and formalized channels of advancement and training are provided. Career service covers all employees of ASPA except contract specialists.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2121 Certificate of Eligibles.

“Certificate of eligibles” means the official document from which eligibles are considered for employment.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2122 Certification.

“Certification” means the process by which the names of qualified eligibles are determined.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2123 Chairman of The Board.

“Chairman of the Board” refers to the Chairman of the Board of Directors of ASPA.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2124 Class.

“Class” means 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.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2125 Compensatory Time.

“Compensatory time” means time off in lieu of cash payment for over-time.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2126 Competitive Personnel Action.

“Competitive personnel action” means a type of personnel action which can be effected only if applicable competitive procedures, i.e., those governing advertising and examining, have taken place.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2127 Conference Leadership.

“Conference leadership” means the art of planning, leading, guiding, and directing a conference.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2128 Conflict Of Interest.

“Conflict of interest” means a situation in which an employee’s private interests, usually of an economic nature, conflict, or raise a reasonable question of conflict, with his or her public duties and responsibilities. The potential conflict is of concern whether it is real or apparent.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2129 Contagious Disease.

“Contagious disease” means a disease requiring isolation of the patient, quarantine, or restriction of movement, as prescribed by health authorities.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2130 Contract Specialist.

“Contract specialist” means a person who has entered into an agreement with ASPA to perform specified duties and responsibilities for a specific period of time, who is not in the ASPA career service.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2131 Cooperative Education Plan.

“Cooperative education plan” means training in which trainees alternate between periods of formal instruction in educational institutions and guided learning on the job through work experience related to the formal instruction.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2132 Course Of Study.

“Course of study” means a training plan having a series of instructional units which have been developed to accomplish a specific training objective.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2133 Demotion.

“Demotion” means change of an employee from a position in one class to a position in another class having a lower salary range.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2134 Department.

“Department” means a division of ASPA headed by a manager appointed by the Executive Director.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2135 Desirable Qualifications.

“Desirable qualifications” means 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.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2136 Detail.

“Detail” means the temporary assignment of an employee to a different position for a specified period with the employee returning to his or her 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 detailed.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2137 Director.

“Director” means the Executive Director of ASPA.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2138 Disabled Veteran.

“Disabled veteran” means an individual who has served; 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 Veterans’ Administration or a military department of the United States.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2139 Dismissal.

“Dismissal” means the termination of employment of a permanent employee for cause of or of a probationary employee as specified in this article.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2140 Education.

“Education” means the formal impartation or acquisition of knowledge, skill, or discipline of mind.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2141 Educational Counseling.

“Educational counseling” means the act of conferring with a person for the purpose of aiding him or her in making choices and adjustments relating to schools, course, curriculum, and study.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2142 Elevation.

“Elevation” means restoration of an employee to the higher classification, with permanent status, which he or she had prior to having been granted a voluntary demotion.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2143 Eligible.

“Eligible” means an applicant whose name is on a register of persons who have qualified for a particular class of positions.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2144 Emergency Appointment.

“Emergency appointment” means an appointment to a position pending the establishment of a register for that class or for emergency reasons, not to exceed 30 calendar days unless extended as provided by these regulations.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2145 Employee.

“Employee” means any individual employed by ASPA under the authority of the Executive Director.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2146 Employee Development.

“Employee development” means all planned, supervised experience, training, and/or education that

enhances the individual’s usefulness as an employee, and promotes his or her work-life growth.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2147 Employee Relations.

“Employee relations” means the contacts and relationships between management and the employees in an organization.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2148 Executive Development.

“Executive development” means a plan for the creation of career executives through the systematic development of outstanding employees.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2149 First-Line Supervision.

“First-line supervision” means that level of supervision directly over the rank-and-file or nonsupervisory employees and forming the starting point upward for the direct line of authority and communications to top management.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2150 Followup Training.

“Followup training” means attention given to employees after initial training to ensure and facilitate their application of new skills and information.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2151 Full Biweekly Pay Period.

“Full biweekly pay period” means as follows:

An employee shall be considered, for leave purposes, to have been employed for a full biweekly pay period if he or she has been in a pay status, or a combination of pay status and nonpay status, during all of the days within such period, exclusive of holidays and all non-work days established by the Governor.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2152 Full-Time Employment.

“Full-time employment” means regularly scheduled employment requiring an average of 40 hours of work per week. However, for certification from a register, work between 32 and 40 hours per week shall be considered full time.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2153 Grievance.

“Grievance” means an employee’s expressed feeling of dissatisfaction with aspects of his or her working conditions and working relationships which are outside his or her control. A grievance is not an appeal.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2154 Holidays.

“Holidays” means days set aside to celebrate a religious, state, or other event for which ASPA employees receive time off with pay. Holidays are established by law or are designated by the Governor.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2155 Human Relations.

“Human relations” means the integration of manpower into an effective operational system. Effective conduct of human relations is based upon good communications, which is transmitting an idea so as to make it understood and motivating the recipient to take the right action. The will to do things is generated by people and without this no productive operation is possible.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2156 Human Relations Training.

“Human relations training” means the development of those techniques, habits, skills, and attitudes that will enable individuals to supervise and work effectively with others.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2157 Incentive Awards.

“Incentive awards” means recognition for employees who demonstrate exceptional resourcefulness of skills or perform exceptional acts.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2158 Induction Training.

“Induction training” means inservice training to familiarize an employee with a new assignment, including policies, procedures and other matters affecting conditions of work and safety precautions, performance standards, and other details.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2159 In-Service Training.

“In-service training” means training provided by ASPA for its employees in order to increase their effectiveness in present assignments or to prepare for future assignments using the resources and facilities within the agency and/or within the jurisdiction of the territorial government. The term “staff development” is also used.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2160 Institute.

“Institute” is sometimes applied to full-time training programs ranging in duration from a few days to several weeks, utilizing various training methods, and dealing with a limited or specific subject.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2161 Internship.

“Internship” means a position or assignment that gives an employee planned work experience as part of a training program, which emphasizes the application of theories, principles, and techniques to operating situations.

History: Rule 11-84 eff 19 Dec 84. (part).

4.2162 Intervening Salary Steps.

“Intervening salary steps” means all increment steps in a salary range except the lowest and highest.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2163 Job Analysis.

“Job analysis” means:

- (1) The process of breaking down a position, duty, or task into component parts including what is done, how it is done, and skills and knowledge needed. The technique is used in many phases of management, such as training, placement, classification, and work simplification;
- (2) The resulting statement of information;
- (3) In personnel administration, a complete analysis of all of the job positions in an establishment for the purpose of learning their requirements in terms of ability, and their relationships to each other and to the establishment. It may be, for example, the basis for a program of job evaluation.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2164 Job Code.

“Job code” means an eight-digit code designating a class in terms of its status, salary structure to which assigned, grade level, and job family.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2165 Job Cost.

“Job cost” means the cost arrived at by method of cost accounting which collects charges for material, labor and allocated overhead in the production of a specific order or a finished unit or units,

History: Rule 11-84, eff 19 Dec 84, (part).

4.2166 Job Evaluation.

“Job evaluation” means a comprehensive determination of the relative worth and importance of all the jobs and positions in an establishment. A typical procedure involves the assignment of values to various job skills and characteristics, and a totaling of these values for each job on the basis of a job analysis. A job evaluation program may be for the purpose of setting wage scales, for determining promotion requirements, for establishing incentives, etc.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2167 Job Family.

“Job family” means a group of related series of classes of positions such as clerical, personnel, engineering, or education, etc.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2168 Job Rotation.

“Job rotation” means the procedure of moving workers systematically from their jobs to related jobs as a means of broadening their experience and developing versatility, sometimes called “cross-training”.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2169 Job Standard.

“Job standard” means the level of performance of a given job taken as a basis of comparison.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2170 Journeyman.

“Journeyman” means an individual who has served a formal apprenticeship or has gained substantially equivalent experience over a period of-years, during which time he or she has acquired a comprehensive knowledge and high degree of skill in one or more of the recognized trades.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2171 Leave Without Pay.

“Leave without pay” means authorized absence from duty without compensation, exclusive of suspension or absence without leave (AWOL).

History: Rule 11-84, eff 19 Dec 84, (part).

4.2172 Leave With Pay.

“Leave with pay” means authorized absence from duty with compensation.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2173 Leave Year.

“Leave year” means the period beginning with the first day of the first complete pay period in any calendar year and ending with the day immediately before the first day of the first complete pay period in the following calendar year.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2174 Lecture.

“Lecture” means a method of teaching in which the instructor gives an oral presentation of subject matter, with little or no participation by trainees.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2175 Line.

“Line”, in a private or public business organization, means the chain of direct command and operational responsibility, as distinguished from “staff”.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2176 Line Responsibility.

“Line responsibility” means the ultimate responsibility for effective and efficient performance.

This responsibility includes the following functions: making executive decisions; planning, supervising, and testing operations; conducting inspections; maintaining discipline and training employees.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2177 Management.

“Management” refers to the processes of planning, direction, and control. One managerial function is that of planning, of establishing group or team policies, objectives and programs for the future. A second is organizing the assignment of specialized responsibilities to various departments and levels throughout the entire work team, thus facilitating cooperation and the effective utilization of human and other resources. A third function is usually described as control. Guides and indicators are created to facilitate a continuing check on operations. Through these controls, managers see that what is being done corresponds to objectives and assignments.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2178 Manpower.

“Manpower” means the number of men and women available for productive employment.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2179 Maternity Leave.

“Maternity leave” means 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 the order given.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2180 Medical Certificate.

“Medical certificate” means a written statement, signed by a registered practicing physician or other practitioner, certifying to the incapacitation, examination, treatment, or the period of disability of an employee while he or she was undergoing professional treatment.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2181 Minimum Qualifications.

“Minimum qualifications” means the training, experience and other qualifications established for a given class and required of an applicant for admission to the examination for that class.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2182 Morale.

“Morale” is not a single concept; rather, it is a shorthand expression covering a number of factors such as recognition, credit, security, sense of belonging, opportunity, etc., that may together produce a particular atmosphere among the employees in an organization. It is closely interrelated with a number of incentives which management uses for the employees.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2183 Motion Study.

“Motion study” means the study of body motions used in performing an operation, with thought toward improving the operation by eliminating unnecessary motions and simplifying the necessary motions, so that maximum efficiency is realized.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2184 Motivation.

“Motivation” is applied to an inner urge that moves a person to action, and also to a contemplated result, the desire for which moves the person.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2185 Noncompetitive Personnel Action.

“Noncompetitive personnel action” means a 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.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2186 Nonstandard Workweek.

“Nonstandard workweek” means irregular or indeterminate hours worked by employees, the nature of whose duties commonly or frequently preclude successful job completion in standard work weeks over a prolonged period.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2187 Off-Site Training.

“Off-site training” means in-service training given to an employee outside their actual work area; for example, classroom training.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2188 On-The-Job Training.

“On-the-job training” means in service training given to an employee within the work area while doing productive work.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2189 Orientation Training.

“Orientation training”, as part of induction, means in-service training designed to assist workers to adapt themselves as quickly as possible to their job environment, to acquire satisfactory attitudes, and to become familiar with the organization in which they work.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2190 Out-Service Training.

“Out-service training” means training provided by an agency for its employees in order to increase their effectiveness in their present assignments, or to prepare for future assignments, using resources and facilities outside of ASPA or the jurisdiction of the ASG.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2191 Overtime.

“Overtime” means work performed in excess of 40 hours per week for employees with a regular workweek.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2192 Part-Time Employment.

“Part-time employment” means work of regularly less than 40 hours per week. However, for certification from registers, work of less than 32 hours per week shall be considered as parttime.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2193 Pay Adjustment.

“Pay adjustment” means a change in the rate of compensation due to revision of the salary schedules of ASPA or for reasons not covered elsewhere.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2194 Performance Rating.

“Performance rating” means the formal process of evaluating some or all of the individuals who make up the work team and perform the work, in respect to

the quality and quantity of the work performed by them. In some cases, it is called employee merit, service, or efficiency rating.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2195 Performance Standard.

“Performance standard” means the measure of the performance necessary to meet the needs of the operational system.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2196 Periodic Increment Date.

“Periodic increment date” means the date established in accordance with the merit system rule on which an employee is entitled to the next salary step increment within his or her range as stated in the compensation plan.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2197 Permanent Employee.

“Permanent employee” means an employee appointed in a career service position who has successfully completed a probationary period:

History: Rule 11-84, eff 19 Dec 84. (part).

4.2198 Personnel Management.

“Personnel management,” means:

- (A) the utilization of human resources by management for the accomplishment of the objective of the organization;
- (B) the branch of business management concerned with the administration and direction of all of the relations between an organization and its employees including the recruiting of new employees, training, testing, promoting, and supervising employees, etc., as well as the administration of all personnel relations.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2199 Position.

“Position” means a group of duties and responsibilities. A position may be filled or vacant, full time or part time, temporary or permanent. Positions are in the career service.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21100 Position Description.

“Position description” means a written description of each group of duties and responsibilities constituting a position.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21101 Post-Training.

“Post-training” means training given after entering a position. The training given before entering is called preemployment training.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21102 Preassignment Training.

“Preassignment training” means in-service training given before an employee is assigned to a specific job.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21103 Preemployment Training.

“Preemployment training” means the training given to employees prior to coming into service.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21104 Preference Eligible.

“Preference eligible” means a U.S. citizen or a U.S. national of American Samoan ancestry who is a veteran as defined in these regulations; a disabled veteran as defined in these regulations; or the unremarried widow of a veteran.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21105 Premium Payment.

“Premium payment” means wage payment over and above the basic salary rate for extraordinary conditions of employment, such as overtime and special tours of duty.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21106 Probationary Period.

“Probationary period” means the trial period of employment following certification and appointment to, or reemployment in, any position in the career service, including promotional positions.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21107 Program.

“Program” means:

- (1) A plan or scheme of administrative action designed for the accomplishment of a definite objective which is specific as to time-phasing of the work to be done and the means allocated for its accomplishment:
- (2) For budget and accounting purposes a complete plan of work or effort to accomplish a stated object.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21108 Promotion.

“Promotion” means a change of an employee from a position in one class to a position in a class having a higher salary range.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21109 Public Administration.

“Public administration” means the activities of government to accomplish public goals.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21110 Rating.

“Rating” means the act of classifying according to grade, class, rank, or other unit of measuring or evaluation.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21111 Reassignment.

“Reassignment” means movement of an employee from one position to another position in the same class or grade or from one position to another position in a different class at the same grade.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21112 Reduction-In-Force.

“Reduction-in-force” means a separation from service because of a lack of funds and/or work and/or reorganization and without cause on the part of the employee,

History: Rule 11-84, eff 19 Dec 84, (part).

4.21113 Reduction In Salary.

“Reduction in salary” means place of an employee’s salary at a lower step at the same or lower grade as a result of a disciplinary action.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21114 Refresher Training.

“Refresher training” means training for employees who lack up-to-date information, habits, or skills in an occupation in which they have been previously trained.

History: Rule 11-84. eff 19 Dec 84, (part).

4.21115 Register.

“Register” means a list of eligible names established for employment or reemployment in a class.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21116 Reinstatement.

“Reinstatement” means appointment of an employee who has previously successfully completed his or her probationary period.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21117 Related Training.

“Related training” means instruction which is related to the job and provides knowledge and information concerning theoretical and technical aspects of the job, such as properties of materials used, applied science, mathematics, and drawing.

History: Rule 11-84. eff 19 Dec 84. (part).

4.21118 Remedial Training.

“Remedial training” means training given to employees for the purpose of correcting specific weaknesses in work performance.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21119 Resignation.

“Resignation” means a voluntary separation from employment.

History: Rule 11-84. eff 19 Dec 84. (part).

4.21120 Resources.

“Resources” is a term often used by management to describe these productive factors: labor, capital, and machinery. It includes personnel who do the work, and funds, equipment, and materials with which to work. The apportionment of available resources is a responsibility of the head of the organization.

History: Rule 11-84. eff 19 Dec 84. (part).

4.21121 Retraining.

“Retraining” means training given an employee to bring him or her up to date on new developments, techniques, or procedures in his or her present job.

History: Rule 11-84. eff 19 Dec 84. (part).

4.21122 Reversion.

“Reversion” means voluntary or involuntary movement of an employee during a six-month trial service period to the lower class which he or she held prior to his or her last promotion.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21123 Salary Range.

“Salary range” means a sequence of minimum, intervening, and maximum dollar amounts assigned to a specific class.

History: Rule 11-84. eff 19 Dec 84. (part).

4.21124 Screening Committee.

“Screening committee” consists of three ASPA or ASG employees or any combination thereof, who have been appointed by the Executive Director to objectively review applications for classes of positions classified at grade 9 and above for which no comprehensive written, oral, or performance examination exists. Members evaluate the experience and training recorded on an application against the minimum qualifications officially established for the class and rank the applicants in the order of best qualified.

History: Rule 11-84. eff 19 Dec 84. (part).

4.21125 Selecting Authority.

“Selecting authority” means 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.

History: Rule 11-84. eff 19 Dec 84, (part).

4.21126 Selective Certification.

“Selective certification” means the certification of eligibles possessing the special qualifications required for a specific position.

History: Rule 11-84. eff 19 Dec 84, (part).

4.21127 Seminar.

“Seminar” means an advanced study group with selected members, each of whom investigates some aspects of a subject and reports thereon to the group, the members of which then discuss and evaluate the findings.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21128 Sick Leave.

“Sick leave” means absence from duty because of illness or other disability or exposure to contagious disease.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21129 Skill Training.

“Skill training” means development of a facile and well-integrated performance, usually associated with mechanical and motor responses, such as those used in typing, glassblowing, and swimming.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21130 Standard Workday.

“Standard workday” means an assigned eight-hour work-period.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21131 Standard Workweek.

“Standard workweek” means 40 hours divided into five regular assigned eight-hour days within a seven-day period.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21132 Supervisor.

“Supervisor” means any individual having substantial responsibility requiring the exercise of independent judgment who, on behalf of management, regularly participates in the performance of all or most of the following functions over at least three employees: promote, transfer, suspend, discharge, or adjudicate grievances of other employees.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21133 Suspension.

“Suspension” means an enforced absence without pay for disciplinary purposes.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21134 Temporary Employment.

“Temporary employment” means employment during the absence of a permanent employee on leave or for work done at a work load peak and normally lasting for less than six months but not exceeding one year.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21135 Termination.

“Termination” means separation from employment for reasons beyond the control of the employee.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21136 Training Aids.

“Training aids” means any material or device which facilitates learning, such as movies, slides, posters, booklets, videographs, audio-visual aids, etc.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21137 Training Committee.

“Training committee” means a committee authorized to consider training problems and devise solutions, develop training policies, promote their acceptance, and advise management in the execution of those policies.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21138 Training Plan.

“Training plan” means a method or scheme for obtaining a certain specific training objective, and containing the following information:

- (1) Objective of the training;
- (2) Who will be trained;
- (3) Name of instructor;
- (4) Schedule of meetings, etc.
- (5) Outline of material to be presented;
- (6) A plan for evaluating the effectiveness of the training.

History: Rule 11-84, eff 19 Dec 84, (part).

4.21139 Training Policy.

“Training policy” means a statement defining the objectives and the responsibilities for training; the relation between training staff and other staff and operating officials, and the general procedures for

organizing, operating, and evaluating a training program.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21140 Training Timetable.

“Training timetable” means a form which lists the various tasks in a given organization or unit, and shows for each employee the tasks:

- (1) Which he or she can perform adequately;
- (2) In which he or she is not to be trained during the period under consideration; and
- (3) In which he or she is to be trained and the time by which this training is to be completed.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21141 Transfer.

“Transfer” means movement of a permanent employee from a position in ASPA to a similar position in another agency of the American Samoa Government, or from a position in one department of ASPA to a similar position in another department, and shall be subject to whichever provision applies; e.g., promotion, reassignment, or demotion.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21142 Trial Service Period.

“Trial service period” means a six-month trial period of employment of a permanent employee beginning with the effective date of a promotion or demotion.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21143 Tuition.

“Tuition” means payment of appropriated funds to outside agents or agencies for instructional services; the fee charged by an instructor or school for instruction. “Tuition” does not include fees collected for defrayment of other or incidental expenses, such as registration fees, laboratory fees, costs of books, or charge for space or utilities.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21144 Unassembled Examination.

“Unassembled examination” means an examination in which the education, training, and experience of applicants is rated as set forth in their applications.

History: Rule 11-84, eff 19 Dec 84. (part).

4.21145 Veteran.

“Veteran” means 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.

History: Rule 11-84, Eff 19 Dec 34, (part).

4.21146 Work Simplification.

“Work simplification” means a management technique for simplifying methods and procedures and eliminating waste of manpower, materials, equipment, and facilities. Process study, operation study, and layout study are phases of this subject.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 22 – RECRUITMENT & PLACEMENT

Sections:

- 4.2201 Requirements Generally-Nepotism-Effective Dates.
- 4.2202 Administrative Responsibilities.
- 4.2203 Competitive-Noncompetitive Procedures Applicability.
- 4.2204 Recruitment-Vacancy Notice-Evaluation Announcement.
- 4.2205 Applications.
- 4.2206 Disqualification Of, Refusal to Examine Applicant.
- 4.2207 Examination-Final Rating.
- 4.2208 Veteran Preference.
- 4.2209 Registers of Eligible Applicants.
- 4.2210 Certification of Eligibles.
- 4.2211 Appointment Types.
- 4.2212 Reinstatement After Separation.
- 4.2213 Promotion-Lateral Movement-Transfer-Detail-Demotion.
- 4.2214 Retired Employees Reemployment.

4.2201 Requirements Generally-Nepotism-Effective Dates.

In filling vacancies within the career service, ASPA will adhere to the policy guidelines set for in 7.0204—7.02 14 ASCA. It is ASPA’s policy that:

- (1) Appointments and promotions to all positions shall be made solely on the basis of merit, fitness, length and quality of previous service, and relative skills, knowledge, and ability as shown by examinations;
- (2) The same standards and methods shall be used in evaluating all candidates who are in competition for the same class of work;
- (3) 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:
 - (A) The applicant was born in American Samoa;
 - (B) One of the parents of the applicant was born in American Samoa;
 - (C) The applicant is married to an American Samoan;
 - (D) The applicant was legally adopted by an American Samoan;
 - (E) The applicant has resided continuously in American Samoa for at least 10 years and has been approved by the immigration board.

Only when no permanent resident can be found who meets the minimum qualifications for employment established for a particular class of work can another person be employed;
- (4) Applicants who A. have been selected for positions in the career service must successfully pass a preemployment physical examination before they can be appointed;
- (5) In all recruitment and placement activities, it is the policy of ASPA that 2 or more members of a family may be employed within the same office as long as one member does not officially and immediately supervise the other. This requirement not only is applied on the basis of facts as they exist as of the time of appointment but at any time while serving as an employee of ASPA;
- (6) The official effective date for all recruitment and placement actions, as well as other personnel actions shall be established by the Executive Director of ASPA 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. The effective date for within grade step increments is described in the section of these regulations on classification and pay. Effective dates for appointments can only be established after the prerequisite medical, police, and immigration clearances have been obtained by ASPA. Retroactive effective dates are only set when an administrative error has occurred or an appeals action results in retroactive corrective action.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2202 Administrative Responsibilities.

The Executive Director has primary responsibility for establishing and administering procedures for filling vacancies in compliance with appropriate federal and ASPA rules. However, all employees and supervisors share responsibility for the successful operation of the system.

- (a) The Executive Director is responsible for:
 - (1) Implementing a merit system policy and procedural guides for filling positions;
 - (2) Providing leadership and support for the merit system as it relates to all segments and activities of ASPA;
 - (3) Assuring that managers and supervisors are aware of the objectives and requirements of this program;
 - (4) Assuring that applicants or potential applicants are informed, at least annually, that they may file or refile employment applications with ASPA.
- (b) Managers and supervisors are responsible for:
 - (1) Providing active support to the objectives of the merit system and fully complying 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 and releasing, within a reasonable time, their subordinate employees selected for promotion, transfer or reassignment;
- (4) Providing firm merit system support to employees and keeping themselves fully informed so as to be able to provide employees with information on the merit system and its 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) ASPA's personnel function is responsible for:

- (1) Developing and employing the procedures necessary for recruitment, examination, and certification;
- (2) Developing, in cooperation with directors, managers and supervisors, qualification requirements and evaluation methods for specific positions;
- (3) Providing the necessary technical competence required to operate the merit system and publicize its operation;
- (4) Announcing examinations and/or position vacancies as appropriate, rating applications, establishing and maintaining lists of eligible and issuing lists of eligibles to selecting officials;
- (5) Maintaining the required documentation of all personnel actions covered by the plan;
- (6) Assuring that the requirements of the merit system have been met before taking personnel action on a position change.

ASPA may work with the ASG Office of Manpower Resources or contract for expert

assistance in fulfilling these responsibilities.

(d) Employees are responsible for:

- (1) Familiarizing themselves with the provisions of the merit system;
- (2) Personally applying for announced vacancies in which they are interested, and for which they meet qualification standards, by submitting required, designated application material;
- (3) Demonstrating that they have the skills, abilities, and personal 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.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2203 Competitive-Non-Competitive Procedures Applicability.

Vacancies can either be filled competitively or noncompetitively.

- (a) Competitive procedures apply to the following types of actions:
- (1) Selection of an applicant not employed by ASPA for either a permanent or temporary appointment;
 - (2) Promotion of an employee in the career service, except under circumstances specified under subsection (b) of this section;
 - (3) Reinstatement of a former ASPA employee who has completed his or her 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;
 - (4) Selection of an ASPA employee who is currently on an emergency appointment for a temporary or permanent position;

- (5) Selection of an employee who is in a nonsupervisory position to fill a supervisory position.
- (b) Noncompetitive 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;
 - (B) Career promotion(s) of employees up to the full performance level position in the career ladder;
 - (C) 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 position;
 - (3) Repromotions of employees to positions or grades from which demoted without personal cause or to intermediate grades below the grades from which demoted;
 - (4) Conversions to a different pay system without change in duties and responsibilities;
 - (5) Reinstatement of a former ASPA employee who has completed the probationary period in the career service to the same or similar class held previously in the agency;
 - (6) Transfer of employment from one department to another department. If such transfer also involves promotion, promotion procedures apply.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2204 Recruitment-Vacancy Notice-Evaluation Announcement.

In filling vacancies competitively, all recruitment efforts shall be conducted publicly in a manner which will attract a sufficient number of qualified persons to meet the needs of ASPA. Position action requests will be completed for all new positions or changes to existing positions. These are prepared by ASPA and approved by the Executive Director. Vacancy notices and/or examination announcements shall then be advertised and posted publicly. They shall specify title and salary range of the class, information on the duties performed, applicable minimum or desirable qualifications, and type of examination. Open competitive recruitment shall be for at least 15 calendar days except that in the case of great need the Executive Director may reduce the filing period to five days.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2205 Applications.

All applications shall be on a form prescribed by the Executive Director. The applicant's signature shall certify the truth of the stated information. Applications shall remain under active consideration by ASPA for one year from the date received.

- (a) No information shall be solicited or accepted which reveals religious or political affiliations of the applicant information regarding the race or ethnic background of applicants shall be solicited only for use in an affirmative action minority employment program.
- (b) Applications filed with ASPA by the date specified in the vacancy notice or examination announcement will be considered.
- (c) Any person who willfully makes false statements concerning a material matter in any application for employment with ASPA may be fined in an amount not to exceed \$100, or imprisoned for not more than 6 months, or both.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2206 Disqualification of Refusal To Examine Applicant.

- (a) Accepted standards of personnel practice will be followed in screening applicants. An interview form will be filled out for all applicants

interviewed by ASPA by either the department head or other appropriate interviewer. The form is routed to the Executive Director at the completion of the interview for use in the selection process. ASPA may refuse to examine an applicant or, after- examination, may disqualify such applicant or remove his or her name from a register or refuse to certify any person otherwise eligible on a register if the applicant:

- (1) Is found to lack any of the requirements established for the class;
- (2) Is so disabled as to be rendered unfit to perform the duties of the class;
- (3) Is addicted to the use of narcotics or the habitual excessive use of intoxicating beverages;
- (4) Has been convicted of any offense that would adversely affect ASPA and which would be grounds for disqualification from the position for which he or she is applying;
- (5) Has made a false statement of material fact in his or her application;
- (6) Has previously been dismissed or requested to resign from private or public service for delinquency, misconduct, inability to do similar work, or any other lack of fitness as an employee;
- (7) Has used, or attempted to use, bribery to secure an advantage in the examination or appointment;
- (8) Has directly or indirectly obtained information regarding examinations to which he or she was not entitled;
- (9) Has taken part in the compilation, administration or correction of the examination.

History: Rule 11-84. eff 19 Dec 84, (part).

4.2207 Examination-Final Rating

The Executive Director or his or her 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.

- (a) 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 he or she is competing as well as his or her general background and related knowledge shall be rated objectively. A passing score will be established for each test included in the examination.
- (b) Whenever possible, 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) Examination announcements shall specify the desirable or minimum requirements, the parts of the examinations, and the method of rating announcements shall be prominently posted to ensure that the information is reasonably available to all.
- (f) A performance evaluation may be used to construct scores in promotional examinations, provided that the Executive Director determines such evaluations are practical and necessary to improve the effectiveness of the examination.
- (g) Each applicant shall receive notice of Final rating. After receipt of the notice of rating, the applicant may request and receive information regarding his or her score on any part of the examination, or may give written authorization for his or her supervisor or department head to

obtain the information for him or her. The same information may upon request be furnished to the supervisor or department head concerning a certified eligible.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2208 Veteran Preference.

- (a) In open competitive examinations, eligible veterans shall receive preferential consideration as follows:
 - (1) Ten additional points to a disabled veteran. This preference shall be utilized in the open competitive examination only and not in any promotional examination;
 - (2) Five additional points to a veteran or the unremarried widow of a veteran. This preference shall be utilized in open competitive examination only and not in any promotional examination. (b) The names of preference eligibles shall be entered upon the appropriate registers ahead of others having the same score.
- (c) If the selecting authority passes over a preference eligible whose name appears on the certificate of eligibles forwarded to him or her and selects a nonpreference eligible, he or she shall file written reason there for with the Executive Director.
- (d) When 3 or more names of preference eligibles appear on a certificate of eligibles, the selecting official may select only a preference eligible to fill the vacancy under consideration.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2209 Registers of Eligible Applicants.

The following types of registers shall be established and maintained by ASPA:

- (a) Reduction-in-force Register.
 - (1) Composition. A reduction-in-force register will be prepared for each classification, listing 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. The employee's name shall appear for all classifications in which he or she held permanent status and, where appropriate, the employee's geographic availability will be shown.

- (2) Method of Ranking. This register will be ranked according to seniority; those with the longest period of performance rated four or better on their final performance evaluation will be placed at the top of the list, the balance of the names placed in descending order. Those with performance evaluations showing ratings of less than four will be placed at the bottom of the list, regardless of years of service.
 - (3) Life of Register. An eligible's name will normally remain on this register for one year.
 - (4) Certification. Names from this list shall be certified first to the selecting authority before those from any open or promotional register.
- (b) Promotional Register.
 - (1) Composition. The promotional register will be established for a specific position in the agency 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 who have received a passing final grade in the promotional examination and are eligible to be certified.
 - (2) Method of Ranking. This register shall be ranked according to final score from the highest to the lowest.
 - (3) Life of Register. The life of the promotional register shall be until the position is filled.
 - (c) Open Competitive Register.
 - (1) Composition. The open competitive register will contain the names of all persons who have passed the appropriate examination for each class of work on an open basis.

- (2) Method of Ranking. This register shall be ranked by the final score, from highest to lowest.
- (3) Life of Register. The life of a register shall be one year or until replaced by a register established through a new examination.
- (4) Eligibles may be removed from the register under the following circumstances:
 - (A) On evidence that the eligible cannot be located by the postal authorities or the village pulenu'u;
 - (B) On receipt of a statement from the eligible declining an appointment and stating that he or she no longer desires consideration for a position in that class;
 - (C) If 3 offers of a probationary appointment to the class for which the register was established have been declined by the eligible;
 - (D) If an eligible fails to reply to a written inquiry as to availability after 5 days in addition to the time required to receive and return the inquiry;
 - (E) If an eligible accepts an appointment and fails to present himself or herself for duty at the time and place specified without giving satisfactory reasons for the delay to the appointing authority.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2210 Certification of Eligibles.

Authorized position vacancies can only be filled from the list of eligible applicants.

- (a) Upon identifying the need to fill a position, the Executive Director shall cause to be prepared an eligible list consisting of:
 - (1) Names of eligible applicants from the reduction-in-force list, if any. The selection must be made from this list if one exists;
 - (2) Names of eligibles from the pertinent open or promotional list. No more than 5 names will be considered, except where candidates below the fifth rank have the same

numerical score as the person named as number five; in this instance, additional names will be included to the extent there are eligibles with that same score.

- (b) Fair consideration must be given to all eligible names. One of the following actions will be taken:
 - (1) Appointment of one of the eligible candidates;
 - (2) Consideration of additional names in place of eligibles who:
 - (A) Fail to reply within 4 days of notice to appear for consideration;
 - (B) Are not satisfactory for valid and pertinent reasons directly connected with the position;
 - (3) Decision not to fill the position.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2211 Appointment Types.

- (a) Career Service Appointments. Career service appointments are always made through open competitive civil service examination procedures to fill permanent, regularly budgeted positions from the open or promotional registers. They always require a probationary period of one-year, satisfactory completion of which is a requisite for permanent status in the position.
- (b) Temporary Appointments.

- (1) When there is work of a temporary nature, at the completion of which the services of an additional employee will not be required, the Executive Director in authorize a temporary appointment for a period not in excess of one year.
- (2) Such appointment shall be made from a register of eligibles, if eligibles are available. The selection of an eligible from the register shall not affect the retention of the eligibles on the eligible list and he or she shall continue to be considered for probational appointment, should an appropriate vacancy occur.

- (3) Service under a temporary appointment is not creditable for permanent status.

(c) Emergency Appointments.

- (1) When an emergency occurs requiring the immediate service of a person or persons, the Executive Director may make an emergency appointment.
- (2) Justification of the emergency must be submitted to and approved by the Governor.
- (3) An emergency appointment of an American Samoan national may not be made to exceed 30 days unless the appointment is extended by the Governor up to a maximum of an additional 30 days, based on agency justification of the continuing state of emergency.
- (4) Service under an emergency appointment shall not constitute a part of the employee's probationary period.
- (5) If a person other than an American Samoan national is to be appointed, immigration clearance must be secured prior to entrance on duty, but police and medical clearances may be furnished during the 30-day emergency period.

- (d) Disaster Emergency Appointment. In the case of a disaster, the Executive Director is authorized to make direct, emergency appointments without any clearance, for a period not to exceed ten working days.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2212 Reinstatement After Separation.

- (a) Any person who has satisfactorily completed a probationary period in the career employee service and who has separated therefrom, may be reinstated to a position with the same or similar duties of those he or she previously performed, provided his or her reemployment is not prohibited by rules or laws relating to the reemployment of employees separated for cause or who have abandoned their positions.
- (b) Reinstatement to the same class of work or grade previously held is noncompetitive.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2213 Promotion-Lateral Movement-Transfer-Detail-Demotion.

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

(a) Promotion.

- (1) No employee shall be eligible to be hired from a promotional register until he or she 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 or her probationary period. Employees who have not completed their original probationary period, if selected, must serve a new probationary period. Employees who are otherwise qualified will be admitted to promotional examinations if they are within two months of the experience required by the minimum qualifications and are assigned to a position which provides qualifying experience.

- (2) A permanent employee who is promoted and who fails to satisfactorily complete the probationary period shall be given fifteen calendar days written notice no earlier than ninety days after assuming the position. The Executive Director will notify the employee of the date he or she will automatically revert to his or her former classification. If there are no vacancies in that class, he or she is placed on the reduction-in-force register. 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, the employee shall be terminated:

(b) Lateral Movement.

- (1) Reassignment: Reassignment is the movement of a permanent employee from one position to another in the same or another class within ASPA with the prior approval of the Executive Director. If a

reassignment includes a promotion, the rules governing promotion apply.

(c) Detail.

- (1) Details are intended only for meeting temporary needs of the agency's or another government agency's work program when necessary, services cannot be obtained by other, more desirable or practical means. Interagency details are particularly appropriate for temporary service in the performance of official government functions such as providing disaster assistance, preparation for Flag Day, or election services.
- (2) Detailing employees to other kinds of positions immediately after competitive appointment tends to compromise the competitive principle and is not permitted. Except for an emergency detail of 30 calendar days or less, an employee may not be detailed for at least 3 months after the initial appointment.
- (3) ASPA management is responsible for keeping details within the shortest practicable time limits and for making a continuing effort to secure necessary services through use of appropriate personnel actions.
- (4) Details for 30 calendar days or more shall be recorded on the prescribed form and maintained as a permanent record in official personnel folders. Details of less than 30 calendar days need not be officially documented, but should be recorded in department records.
- (5) All details to higher grade positions will be confined to a maximum period of 120 days unless approved by the Executive Director.
- (6) 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 eligibles on the agency promotional register

for the class or for a related class as determined by the Executive Director.

- (7) An employee who accepts a detail for 30 calendar days or more to a higher graded position shall be paid according to the rule regarding promotion. An employee accepting a detail for less than 30 calendar days shall retain his or her current salary.
- (8) An employee shall not achieve permanent status in the position to which he or she has been detailed and upon termination of the detail shall be returned to his or her former position.

(d) Demotion.

- (1) Demotion may be disciplinary or nondisciplinary, voluntary or nonvoluntary.
- (2) An employee who is demoted may not receive pay at a higher rate than he or she received before demotion.

History: Rule 11-84, eff 19 Dec 84. (part); and Rule 6-87, eff 14 May 84, 1.

4.2214 Retired Employees Reemployment.

An employee who has retired may be reemployed under this chapter but his or her annuity shall be suspended during the period of reemployment under these regulations.

History: Rule 11-84, eff 19 Dec 84. (part).

Title 4 - Chapter 23 – Classification & Pay

Sections:

- | | |
|--------|------------------------------------------------------------------------|
| 4.2301 | Establishment of system. |
| 4.2302 | Position descriptions. |
| 4.2303 | Wage schedule applicability and bases. |
| 4.2304 | Position classification system. |
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| 4.2306 | Administrative review. |
| 4.2307 | Pay schedules. |
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| 4.2309 | Overtime-Compensatory time. |
| 4.2310 | Hazard pay. |
| 4.2311 | Shift differential. |
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4.2301 Establishment of System.

In keeping with the objectives of the American Samoa Code Annotated. The Executive Director shall develop and maintain an agency wide classification and pay system based on objective, consistent, and timely classification of all positions within the agency and shall apply reasonable and consistent assignment of positions to pay grades so as to compensate employees in equitable relationships to each other and to contribute to the attraction and retention of employees. The system so established or any portion thereof may be extended to noncivil service positions as required by law or for the good of the agency.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2302 Position Descriptions.

- (a) ASPA shall maintain current position descriptions covering each career service position authorized in the agency. Each supervisor is responsible for reviewing the descriptions once each year for accuracy. Descriptions for all ASPA positions are included in Section 111 of this manual.
- (b) When duties of positions change, the supervisor must prepare a new position description to reflect the change. ASPA will use the applicable ASG form.
- (c) One copy of each position description shall be furnished to the Executive Director and to the Office or Manpower Resources.

History: Rule 11-84. eff 19 Dec, 84. (part).

4.2303 Wage Schedule Applicability and Bases.

The classification and compensation plan of the agency shall provide for two separate segments:

- (a) The general schedule (GS) which applies to the “white collar” Positions and which is based on “equal pay for substantially equal work”.
- (b) The wage grade schedule (WG), which applies to all “blue collar” jobs and which is also based on equal pay for substantially equal work”.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2304 Position Classification System.

The Executive Director shall develop and maintain a position classification system which shall provide for the placement of each position into an appropriate class. This includes:

- (1) The establishment of written class specifications which describe each of the various classes within the classification plan in terms of the nature, variety, and level of duties and responsibilities, and the minimum qualifications required to perform adequately;
- (2) The establishment, revision, or abolition of classes in order to maintain the plan on a current basis;
- (3) The establishment of official class titles;
- (4) The changing of any position from one class to another class whenever warranted by significant change in position duties and responsibilities or class definition, or to correct an error;
- (5) The auditing of positions in order, to ascertain that current positions are correctly classified.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2305 Effective Date of Actions.

- (a) The effective date of an initial classification action shall be the date action is officially taken to classify the position.
- (b) The effective date of any subsequent classification action shall be the beginning of the pay period immediately following the date of notice of action, except that the date may be adjusted by the Executive Director in the event an incumbent fails to meet the qualification of the class, for budgetary reasons, or for other good cause.
- (c) The effective date of a classification action when a classification and/or compensation survey is initiated by the Executive Director shall be the date action is officially taken, or such other date as the Executive Director deems practicable.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2306 Administrative Review.

An administrative review may be requested by an employee or designated representative or by the department head within 20 days after the effective date of the classification or reclassification action.

- (a) The request for administrative review must be in writing and shall contain the specific reason(s) for disagreement with the classification action of the Executive Director, and shall state the action requested and the reason the requested action is deemed more appropriate. (b) A request for administrative review must be received no later than ten days from the date of the notice of classification.
- (c) The Executive Director shall take appropriate action to review the classification and shall notify the department of the final decision.

History: Rule 13-84, eff 19 Dec 84. (part).

4.2307 Pay Schedules.

- (a) The white collar pay schedule shall be known as the general pay schedule and shall be as follows (effective January 7, 1980; revised July 1,1981):

[SEE NEXT PAGE FOR PAY SCHEDULE]

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

ASAC § 4.2307(a) - White Collar Pay Schedule										
Grade	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9	Step 10
GS-18								30,684	31,984	33,284
GS-17					26,916	28,086	29,256	30,426	31,596	32,766
GS-16			23,405	24,575	25,745	26,915	28,085	29,255	30,425	31,595
GS-15	20,177	21,217	22,257	23,297	24,337	25,377	26,417	27,457	28,497	29,537
GS-14	17,245	18,155	19,065	19,975	20,885	21,795	22,705	23,615	24,525	25,435
GS-13	14,739	15,519	16,299	17,079	17,859	18,639	19,419	20,199	20,979	21,759
GS-12	12,597	13,247	13,897	14,457	15,197	15,847	16,497	17,147	17,797	18,447
GS-11	10,767	11,417	12,067	12,717	13,367	14,017	14,667	15,317	15,967	16,617
GS-10	8,282	9,802	10,322	10,842	11,362	11,882	12,402	12,922	13,441	13,962
GS-9	8,071	8,591	9,111	9,631	10,151	10,671	11,191	11,711	12,231	12,751
GS-8	7,018	7,538	8,058	8,578	9,098	9,618	10,138	10,658	11,178	11,698
GS-7	6,156	6,546	6,936	7,326	7,716	8,106	8,496	8,886	9,276	9,666
GS-6	5,400	5,790	6,180	6,570	6,960	7,350	7,740	8,130	8,520	8,910
GS-5	4,779	5,169	5,559	5,949	6,339	6,729	7,119	7,509	7,899	8,289
GS-4	4,267	4,527	4,787	5,047	5,307	5,567	5,827	6,087	6,347	6,607
GS-3	3,827	4,087	4,347	4,607	4,867	5,127	5,387	5,647	5,907	6,167
GS-2	3,708	3,968	4,228	4,488	4,748	5,008	5,268	5,528	5,788	
GS-1	3,640	3,900	4,160	4,420	4,680	4,940	5,200	5,460		

- (b) The blue collar pay schedule shall be known as the wage grade schedule and shall be as follows (effective October 19, 1978; revised July 1, 1981):

[SEE NEXT PAGE FOR PAY SCHEDULE]

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

ASAC § 42307(b) – Blue Collar Pay Schedule													
Grade	I. WG	1	2	3	4	5	6	7	8	9	10	11	12
20		6.10	6.41	6.73	7.07	7.42	7.79	8.18	8.59	9.02	9.47	9.94	10.44
19		5.75	6.04	6.34	6.66	6.99	7.34	7.71	8.10	8.51	8.94	9.39	9.86
18		5.40	5.67	5.95	6.25	6.56	6.89	7.23	7.59	7.97	8.37	8.79	9.23
17		5.05	5.30	5.57	5.85	6.14	6.45	6.77	7.11	7.47	7.84	8.23	8.64
16		4.70	4.94	5.19	5.45	5.72	6.01	6.31	6.63	6.96	7.31	7.68	8.06
15		4.40	4.62	4.85	5.09	5.34	5.61	5.89	6.18	6.49	6.81	7.15	7.51
14		4.10	4.31	4.53	4.76	5.00	5.25	5.51	5.79	6.08	6.38	6.70	7.04
13		3.80	3.99	4.19	4.40	4.62	4.85	5.09	5.34	5.61	5.89	6.18	6.49
12		3.50	3.68	3.86	4.05	4.25	4.46	4.68	4.91	5.16	5.42	5.69	5.97
11		3.25	3.41	3.58	3.76	3.95	4.15	4.36	4.58	4.81	5.05	5.30	5.57
10		3.00	3.15	3.31	3.48	3.65	3.83	4.02	4.22	4.43	4.65	4.88	5.12
09		2.75	2.89	3.03	3.18	3.34	3.51	3.69	3.87	4.06	4.26	4.47	4.69
08		2.50	2.63	2.76	2.90	3.05	3.20	3.36	3.53	3.71	3.90	4.10	4.31
07		2.30	2.42	2.54	2.67	2.80	2.94	3.09	3.24	3.40	3.57	3.75	3.94
06		2.10	2.21	2.32	2.44	2.56	2.69	2.82	2.96	3.11	3.27	3.43	3.60
05		2.00	2.10	2.21	2.32	2.44	2.56	2.69	2.82	2.96	3.11	3.27	
04		1.88	1.97	2.07	2.17	2.28	2.39	2.51	2.64	2.77	2.91		
03		1.80	1.85	1.94	2.04	2.14	2.25	2.36	2.48	2.60	2.73		
02		1.74	1.83	1.92	2.02	2.12	2.23	2.34	2.46	2.58			
01		1.70	1.79	1.88	1.97	2.07	2.17	2.28	2.39				

- (c) The teachers, counselors and principals pay schedule shall be known as the educational salary schedule and shall be as follows (effective 7 Jan 80; revised 1 Jul 1981):

[SEE NEXT PAGE FOR PAY SCHEDULE]

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

ASAC § 4.2307(c) – Educators Pay Schedule										
Grade	1	2	3	4	5	6	7	8	9	10
ES-20			16,153	16,933	17,713	18,493	19,273	20,053	20,833	21,613
ES-19	15,384	16,164	16,944	17,724	18,504	19,284	20,064	20,844	21,624	22,404
ES-18	14,651	15,431	16,211	16,991	17,771	18,551	19,331	20,111	20,891	21,671
ES-17	13,822	14,602	15,382	16,162	16,942	17,722	18,502	19,282	20,062	20,842
ES-16	13,040	13,820	14,600	15,380	16,160	16,940	17,720	18,500	19,280	20,060
ES-15	12,074	12,724	13,374	14,024	14,674	15,324	15,974	16,624	17,274	17,924
ES-14	11,180	11,830	12,480	13,130	13,780	14,430	15,080	15,730	16,380	17,030
ES-13	10,352	11,002	11,652	12,302	12,952	13,602	14,252	14,902	15,552	16,202
ES-12	9,585	10,235	10,885	11,535	12,185	12,835	13,485	14,135	14,785	15,435
ES-11	8,335	8,855	9,375	9,895	10,415	10,935	11,455	11,975	12,495	13,015
ES-10	7,718	8,238	8,758	9,278	9,798	10,318	10,838	11,358	11,878	12,398
ES-09	7,146	7,666	8,186	8,706	9,226	9,746	10,266	10,786	11,306	11,826
ES-08	6,617	7,137	7,657	8,177	8,697	9,217	9,737	10,257	10,777	11,297
ES-07	6,127	6,647	7,167	7,687	8,207	8,727	9,247	9,767	10,287	10,807
ES-06	5,328	5,718	6,108	6,498	6,885	7,278	7,668	8,058	8,448	8,838
ES-05	4,933	5,323	5,713	6,103	6,493	6,883	7,273	7,663	8,053	8,443
ES-04	4,568	4,828	5,088	5,348	5,608	5,868	6,128	6,388	6,648	6,908
ES-03	4,153	4,413	4,673	4,933	5,193	5,453	5,713	5,973	6,233	6,493
ES-02	3,775	4,035	4,295	4,555	4,815	5,075	5,335	5,595	5,855	6,115
ES-01	3,692	3,952	4,212	4,472	4,732	4,992	5,252	5,512	5,772	

Pay schedule placement.

(a) Initial Appointment.

(1) All initial appointments shall be made at the first step of the appropriate pay range of each of the two salary schedules except that, in the event that recruitment of an employee is not practicable at the first step, the Executive Director may, after appropriate notice and advertising, recruit at any step within the pay range which will attract qualified candidates.

(2) Requests for payment above the minimum may be made by department heads prior to or at the time of appointment but in any event must be made no later than 60 days after the appointment date. Requests received after date of appointment, if granted, will not be granted retroactively.

(b) Reassignment. An employee who is reassigned shall receive the same rate of compensation as he or she presently receives, except that in case of a reassignment from one salary schedule to another salary schedule, the pay rates governing initial appointment shall apply.

(c) Reinstatement.

(1) When an employee is reinstated within a year of separation from ASPA or government service, he or she may be paid at any rate within the pay range which does not exceed his or her highest previous rate of pay, provided that where such rate falls between two steps of the grade to which reinstated, he or she may be paid at the higher step.

(2) The rules governing initial appointment shall apply only when an employee eligible for reinstatement has been separated for at least one year from ASPA or government service.

(d) Returning Veteran. An employee who meet the requirements for reemployment as specified in the Veteran’s Preference Act of 1-44, as amended, and who is reemployed in his or her former position, shall have his or her rate of pay

set at the step he or she would have received and his or her service with ASPA or the government continued. If reemployed in a different position, the pay rule governing initial appointment shall apply.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2308 Step-Increment Increases for Length of Service-Pay Schedule Structure.

(a) Every employee is entitled to an annual step-increment increase at the beginning of the pay period immediately following his or her service year preceding such increase.

(b) A service year is 52 weeks of continuous service in his or her present grade and step, which shall include credit for leave without pay:

(1) To pursue a course of instruction approved by the Executive Director which is related to the employee’s area of work;

(2) To recuperate from an injury for which workers’ compensation weekly payments are made;

(3) For military service when so provided by territorial or federal law; and

(4) For any other authorized purpose, but for no more than 10 workdays.

(c) The compensation for an employee, denied an increment because of substandard performance in his or her job in the service year preceding, may subsequently be increased as of the date his or her performance has been brought up to standard and has so continued for a 3-month period. His or her increment anniversary date will be adjusted accordingly.

(d) Ninety days prior to each employee’s step-increment due date, a notice will be sent to the employee, his or her department head, and immediate supervisor. This notice will call for the submission of an annual employee performance evaluation, which must be completed and returned to the Executive Director and the Office of Manpower Resources for record keeping. ASPA will use the Government of American Samoa Employee Performance Evaluation Form.

- (1) If the performance evaluation is satisfactory or better, the employee will receive a step increment.
 - (2) If the performance evaluation is unsatisfactory, a written note must be submitted to the Office of Manpower Resources 60 days prior to the date the increment is due. Payroll will be notified not to effect the increment.
 - (3) If no performance evaluation is received, no increment will be processed.
 - (e) When the date of promotion and the periodic step-increment date coincide, the periodic increment shall be made prior to the promotional increase.
- (5) Overtime must be requested and approved in advance. Overtime authorization requests are prepared by the department supervisor and must be approved by the Executive Director. (c) Cash Pay for Overtime. Employees in grades GS 1-11 and WB 1-16 are eligible to be compensated in cash for overtime at the rate of 144 times their regular rate of pay for all hours worked in excess of 8 per day or 40 per week. The Executive Director may authorize compensatory leave in lieu of cash, upon mutual agreement with the employee. This leave will be authorized at the rate of 1/2 hours of leave per overtime hour worked.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2309 Overtime-Compensatory Time.

- (a) Applicability. This section applies to all career service employees and certain contract employees whose contracts permit overtime or compensatory time, with the exception of employees in second or third jobs.
 - (b) General Provisions.
 - (1) Every employee is entitled to receive cash pay or time off in lieu of cash for overtime work, as provided in these regulations.
 - (2) Each workweek shall stand alone; “averaging” of hours over 2 or more weeks is not permitted.
 - (3) Workweeks shall be 40 hours in a Fixed and regularly recurring period of 168 hours, in 7 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 any employee’s workweek is established, it shall remain fixed until changed. A change intended or designed to evade the overtime requirement is prohibited.
 - (4) Overtime compensation policies shall not be waived by any agreement between a supervisor and an employee.
- (d) Higher Grades. Employees in grades GS 12 and WB 17 or above or whose grade is XX are not eligible for cash pay for overtime work. They may be compensated for work beyond 8 hours per day or 40 hours per week on an hour-for-hour basis.
 - (e) Hours Worked. “Hours worked”, in general, includes all the time an employee is required to be on duty or on the government premises or at a prescribed workplace and all time during which he or she is “suffered or permitted to work”.
 - (f) Training and Meetings. Attendance at lectures, meetings, training programs, and similar activities will not be counted as hours worked beyond the scheduled workday or workweek. If attendance is outside the employee’s regular working hours and is required by the Executive Director, overtime or compensatory time may be awarded if otherwise applicable.
 - (g) Semiannual Payoff. Compensatory time earned should be taken within 60 days of the pay period in which it was earned. Departments are responsible for monitoring the accumulation of compensatory time. Any balance of compensatory time in excess of 120 hours will be paid to the employee at his or her regular time rate during the last pay period of June and December of each year.
 - (h) Separation. Employees leaving ASPA employment shall be compensated in cash for

accumulated, documented overtime by the agency.

- (i) In the event of death of an employee, his or her accumulated overtime shall be paid to appropriate persons provided by these regulations.
- (j) Records. ASPA is responsible for keeping appropriate records of hours worked and leave earned, used accrued etc. of its employees.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2310 Hazard Pay.

- (a) It is recognized that some positions at times involve intrinsically hazardous working conditions, justifying "hazard pay". "Hazard pay" is pay additional to the normal hourly pay for the position. payable to employees while actually engaged in the hazardous activities. Upon the recommendation of a department head, the Executive Director may grant hazard pay differentials to employees who are temporarily exposed to unusually hazardous working" conditions and where the following conditions are met:
 - (1) The exposure of unusually hazardous working conditions is temporary:
 - (2) The degree of hazard is severe, or most severe.
- (b) Hazard pay has been authorized as follows:
 - (1) Utility linemen working on utility poles 45 feet high or higher, \$0.50 per hour of time on such poles:
 - (2) Utility linemen working "hot" lines, regardless of height, \$0.75 per hour of time on "hot" lines:
 - (3) Utility linemen are entitled to receive pay for both high-pole and "hot" line work for each hour of work under such conditions:
 - (4) In computing hours spent at work calling for hazard pay", fractional hours shall accrue in quarter-hour segments.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2311 Shift Differential.

- (a) Each department which has responsibilities requiring work around the clock will set up 3 shifts; the normal morning to afternoon is known as the "day shift": the shift beginning in the afternoon into the evening is known as the "swing shift": and the late night to morning shift is known as the "graveyard shift".
- (b) Employees regularly scheduled to the "swing shift" receive an additional \$.15 per hour for each hour of work on that shift.
- (c) Employees regularly scheduled to the "graveyard shift" receive an additional \$.25 per hour for each hour worked on that shift.
- (d) The shift differential is given only when the employee actually works on either the swing shift or the graveyard shift. If, for any reason, an employee assigned to either the swing or graveyard shift fails to work that shift, taking either annual or sick leave, he or she does not receive the extra \$. 15 or \$. 25 for that shift.
- (e) On the other hand, if an employee employed on any shift is forced to work 2 shifts in one day. the employee should not receive the extra shift differential but must be paid the overtime of time and a half.

For example,

- (1) an employee, regularly scheduled to work the day shift who is required to continue work on the swing shift because of the absence of the regularly scheduled swine shift employee, is entitled to I-V2 times his or her regular day shift pay.
- (2) An employee regularly scheduled to work the swing shift who is forced to continue to work on the graveyard shift because an employee failed to show up, is entitled to I-V2 times his or her swing shift rate.
- (3) An employee, regularly scheduled to work the graveyard shift who continues to work the day shift because an employee failed to show up is entitled to I-A times his or her graveyard shift rate.

History: Rule 11-84. eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 24 – HOURS, LEAVES & ABSENCES

Sections:

- 4.2401 Purpose.
 - 4.2402 Administrative responsibilities.
 - 4.2403 Holidays-Designated-Proclamation.
 - 4.2404 Holidays-Day observed.
 - 4.2405 Annual leave-Charges to leave.
 - 4.2406 Sick leave.
 - 4.2407 Leave without pay.
 - 4.2408 Political leave.
 - 4.2409 Maternity leave.
 - 4.2410 Military leave.
 - 4.2411 Excused absence.
 - 4.2412 Repealed.
 - 4.2413 Unauthorized absence.
 - 4.2414 Workers' compensation recipients.
-

4.2401 Purpose.

It is recognized 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 to meet personal and family needs. It is also considered essential to the maintenance of a stable, satisfied, and productive workforce for employees to be compensated to a reasonable extent during periods of involuntary absence from duty due to physical incapacity. Deserving employees, whose retention is of demonstrated value, should be guaranteed job security when it is necessary for them to be in a nonduty status, based on legitimate reasons, for periods longer than permitted under rules governing authorized absence with pay.

ASPA's leave policies are in accordance with 7.12 ASCA (see Appendix I).

History: Rule 11-84. eff 19 Dec 84. (part).

4.2402 Administrative Responsibilities.

- (a) The department of administrative services of the American Samoa Government is responsible for the maintenance of employee leave records and furnishing advance relative to all leave records matters.

- (b) The Executive Director is responsible for all policy matters pertaining to leave and absence from duty.
- (c) Agency department heads and supervisors are responsible for day-to-day administration of the leave policy.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2403 Holidays—Designated-Proclamation.

- (a) The following public holidays are designated by statute and are paid holidays for agency employees:
 - (1) New Year's Day. January 1:
 - (2) Washington's Birthday, the third Monday in February:
 - (3) Good Friday. the Friday before Easter:
 - (4) Flag Day. April 17:
 - (5) Memorial Day. last Monday in May:
 - (6) Independence Day, July 4:
 - (7) Manu'a Islands Cession Day. July 16;
 - (8) Labor Day, the first Monday in September:
 - (9) Columbus Day, the second Monday in October:
 - (10) Veteran's Day, the fourth Monday in October;
 - (11) Thanksgiving Day, the fourth Thursday in November:
 - (12) Christmas Day, December 25.

- (b) Other holidays may be established by Governor's proclamation.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2404 Holidays-Days Observed.

Holidays shall be observed as provided below:

- (a) For employees with workdays on Monday through Friday, if a holiday falls on:
 - (1) Saturday, it is observed on the Friday preceding the holiday;

(2) Sunday, it is observed on the Monday following the holiday:

(3) Workday, it is observed on that workday.

(b) For employees with workdays other than Monday through Friday, if a holiday falls on a:

(1) Day off, it is observed on the first workday after the day off;

(2) Workday, it is observed on that workday.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2405 Annual Leave-Charges to Leave.

(a) Annual. To earn leave an employee must be employed during a full biweekly pay period. He or she is considered to have been employed for a full pay period if he or she is in a pay status of an agency on all days falling within the pay period exclusive of holidays and non- workdays.

(b) Earning Rates.

(1) Full-time employees:

(A) Employees with less than 3 years of creditable service earn 4 hours or ~/z workday of annual leave for each biweekly pay period.

(B) Employees with 3 but less than 15 years of creditable service earn 6 hours or 3/4 workday of annual leave for each full biweekly pay period except for the last full pay period of the calendar year, for which they earn 10 hours of annual leave.

(C) Employees with 15 or more years of service earn 8 hours or one workday of annual leave for each full biweekly pay period.

(2) Part-time employees:

(A) Employees with less than 3 years of creditable service earn one hour of annual leave for each 20 hours in a pay status.

(B) Employees with 3 but less than 15 years of creditable service earn one

hour of annual leave for each 13 hours in a pay status.

(3) 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 amount of pro-rated leave credit:

PRO RATA TABLE

Biweekly Pay Period Workdays	Category 4*	Category 6	Category 8
1	1	1	1
2	1	1	1
3	2	1	2
4	3	2	2
5	4	2	3
6	5	2	4
7	6	3	4
8	6	3	5
9	7	3	5
10	4	6	8

*This column may be applied for sick leave purposes.

(c) 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. Excess leave beyond the 60 days is forfeited except as follows:

(1) Nothing in this section shall be construed to prohibit the taking or require the forfeiture of any annual leave which is validly granted and the taking of which begins on or before the last working day of the current leave year, notwithstanding that the recording of the current accrued annual leave for the current leave year on the last day thereof might result in an accumulation of more than 60 days including the working days of the annual leave so granted and then being taken. The period of such annual leave shall be regarded as if it had been entirely taken prior to the last day of such leave year.

(2) Nothing in this section shall be construed to require the forfeiture of any annual leave when an employee terminates on or before the last working day of the leave year,

notwithstanding the fact that the recording of current accrued annual leave for such year on the last day may result in an accumulation of more than 60 days.

(d) Leave Charges.

- (1) Leave Days. Both annual and sick leave are charged to an employee's account only for absence on regular workdays; i.e., days on which he or she would otherwise work and receive pay during his or her regular tour of duty. Leave is not charged for absence on holidays or other nonwork days.
- (2) Minimum Charge. One hour is the minimum charge for either annual or sick leave. After one hour, additional charges may be made in multiples of 1/2 hour. Absence on separate days are not combined.

(e) When taken.

- (1) Annual leave is provided and used for two general purposes, which are:
 - (A) To allow every employee an annual vacation period of extended leave for rest and recreation; and
 - (B) To provide periods of time off for personal and emergency purposes. These absences involve such matters as death in a family, religious observances, attendance at conferences or conventions, securing a driver's permit, or other personal business which can be disposed of only during the time in which the employee would ordinarily be working.
- (2) Annual leave provided by law is a benefit and accrues automatically. ASPA is responsible for administering the annual leave system and issues instructions concerning the granting of annual leave. Guidelines are as follows:
 - (A) The approval of short periods of leave should generally be the responsibility of immediate supervisors, who best know whether the leave requested is compatible with the workload.

(B) Requests for extensive periods of annual leave may be recommended for approval by the immediate supervisors but require approval at a higher organization level.

(C) Decisions as to the granting of leave will generally be made in the light of the needs of the agency rather than solely the desires of the employee.

(D) Supervisors should ensure that annual leave is scheduled for use so as to prevent any unintended loss of leave at the end of the leave year.

(E) Annual leave must be requested and approved prior to its taking. Failure to secure prior approval may result in a charge to leave without pay and may result in disciplinary action against the offending employee. The ASG form for application for leave must be completed and submitted 3 days before an employee may take leave.

(F) In Lieu of Sick Leave. Approved absence, otherwise chargeable to sick leave, may be charged to annual leave when sickness exceeds accumulated sick leave hours.

(G) Advances. It is not permissible for an employee to be granted annual leave in advance of its having been earned.

(H) Lump-sum Payments.

(1) Entitlement. An employee who has annual leave to his or her credit and who is separated from employment with ASPA 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 he or she would have received had he or she remained in the employ of ASPA until the expiration of the period of annual leave paid. Included is 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.

History: Rule 11-84. eff 19 Dec 84, (part).

4.2406 Sick Leave.

Sick leave is for use when an employee is physically incapacitated to do his or her job, or for such related reasons as exposure to a contagious disease that would endanger the health of coworkers, presence of contagious disease in an employee's immediate family which requires his or her personal care, or for dental, optical, or medical examination or treatment.

(a) Earning Rates.

- (1) Full-time Employee. Employees earn sick leave at the rate of 4 hours or 4 work day for each full biweekly pay period. Sick leave is earned from the first pay period of employment.
- (2) Part-time Employees. These employees earn sick leave at the rate described under the category 4 column of the pro rata table in this chapter.

(b) Maximum Accumulation. Unused sick leave is accumulated without limit.

(c) Granting. Sick leave is a right, provided the requirements of this subsection are met.

ASPA officials have the authority and responsibility to determine that the nature of the employee's illness was such as to incapacitate him or her for his or her 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 3 consecutive workdays. However, management may require that the employee furnish such certificate for sick leave involving any length of time. The employee who becomes ill is responsible for notifying his or her 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.

(d) Advances. An employee may draw upon anticipated sick leave credits if current credits become exhausted. The request shall be made to the Executive Director within these requirements and limitations:

- (1) The advance will be made based upon anticipated accrual of credits up to 30 leave days. If the employee has a planned termination date which will affect the accrual, the number of days which can be advanced will be reduced accordingly.
- (2) The advance will not be authorized automatically. The following factors will be considered prior to approval:
 - (A) Has the employee been wise and careful in the use of leave in the past?
 - (B) Does the doctor show the employee will be able to return to work in a reasonable time?
 - (C) Are the best interests of the agency and the employee served through this action?
 - (D) What are these special circumstances which warrant continuing this person's pay on the chance he or she will return to work and earn the sick leave credit? Length of service, performance record, essential nature of services, and circumstances beyond their control should be cited (pregnancy cases do not generally qualify).

History: Rule 11-84. eff 19 Dec 84. (part).

4.2407 Leave Without Pay.

Leave without pay is a temporary absence from duty in nonpay status granted upon the employee's request and at the discretion of management. The permissive nature of leave without pay distinguishes it from absence without leave (AWOL), which is a nonpay status resulting from a period of absence for which the employee did not obtain advance authorization or for which his or her request for leave has been denied. It shall be the practice of ASPA to grant leave without

pay only when it will be of mutual benefit and interest to the agency and to the employee. Leave without pay shall not be granted for the purpose of an employee participating in private employ-sent.

(a) Administrative Discretion. The granting of leave without pay is a matter of administrative discretion. Employees cannot demand that they be granted leave without pay as a matter of right.

(1) ASPA departments must assure that each request is of such value to the agency. or the serious needs of the employee as to offset costs and administrative inconveniences of the position of the employee being frozen and remaining vacant while the employee is on leave without pay.

(2) Extended leave without pay beyond 30 days may not be approved unless there is assurance that the employee will return to duty and that at least one of the following benefits will result:

(A) Improved work performance and ability;

(B) Protection or improvement of employee's health;

(C) Retention of a desirable employee; and

(D) Furtherance of a program of interest to the agency.

(b) Extended Leave Without Pay. Extended leave without pay requires the prior approval of the Executive Director when properly justified by the department submitting such request. Extended leave without pay will be granted in the following circumstances:

(1) Attendance at a recognized institution of higher learning or a technical school, pursuing a course of instruction which is related to the employee's field of work;

(2) Travel and/or research which will impart knowledge, skills, and/or abilities required in the employee's work

(3) Extended illness with a positive prognosis, or family or personal problems, an end of which can reasonably be predicted;

(4) To work for another agency of ASG or another government on a loan basis, where there is no agreement under the Inter-governmental Personnel Act. The request for the services of the employee must be made through the Governor's office, in writing.

(5) To; serve a required period of military service beyond the 1 5 days which are authorized for pay purposes. The military duty must be for periods of time not to exceed one year and must be categorically mandated, as in the basic training period required for a recruit in the Armed Forces reserves. Leave cannot be granted for voluntary ex tensions or reenlistment;

(6) To protect employee status and benefits when an employee is injured and his or her case is being adjudicated or he or she is receiving benefits under worker's compensation.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2408 Political Leave.

Leave without pay shall be freely granted to any government 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.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2409 Maternity Leave.

Maternity leave, a period of approved absence for incapacitation related to pregnancy and confinement, is chargeable to sick leave or any combination of sick leave, annual leave, and leave without pay, in the order given.

(a) Employees are required to request maternity leave substantially in advance of their intended absence so that staffing adjustments may be made.

(b) Periods of maternity leave shall be based on individual medical determination. A medical certification must be submitted showing expected date of confinement. Maternity leave

may be granted for a period of 6 weeks prior and 6 weeks subsequent to birth.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2410 Military Leave.

- (a) General Provisions. A full-time employee who serves under an appointment without time limitation and who is a member of a reserve component of the Armed Forces of the United States, the U.S. Public Health Service, or the National Guard is entitled to leave of absence for annual military training without charge to annual leave, or loss of pay or service credit, for not more than 15 workdays 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, etc., The National Guard includes the National Guard of the Army and of the Air Force. Application for military leave shall be accompanied by appropriate military orders.
- (b) Maximum. Military leave is limited to a maximum of 15 workdays 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) 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.
- (d) Contract Employees. Contract employees who are members of the Armed Forces reserve components shall, be granted military leave in accordance with the provisions of this section.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2411 Excused Absence.

- (a) Excused absence is absence from duty duly authorized by the Executive Director. without charge to annual leave or loss of pay or service credit, under the circumstances described below:
 - (1) To take an employment examination for a position currently occupied or one to which

the employee may be promoted or reassigned. not to exceed 3 hours:

- (2) To take a physical examination required to determine continued employability;
- (3) To 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) To be unavoidably or necessarily absent from duty for less than one hour or for being tardy;
- (5) To donate blood to the American Red Cross in American Samoa or in emergencies to individuals from the time necessary for such donations, not to exceed 4 hours, provided that the employee does not receive pay for blood;
- (6) To participate in emergency rescue or protective work at the request of local or territorial officials;
- (7) To participate in federally recognized civil defense programs for a reasonable length of time up to 40 hours in a calendar year;
- (8) To vote and register. An employee who desires to vote or register in an election or in a referendum on a civic matter in his or her community may be granted time off without loss in pay or service credit or charge to leave as follows:
 - (A) The employee may be allowed 2 hours of excused absence at the beginning or end of the workday.
 - (B) An employee may be excused for such additional time as may be needed to enable him or her to vote, depending upon the circumstances in the individual case, but not to exceed a full day. Time off in excess of one 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-workday and the place of registration is within a reasonable one-day, roundtrip travel distance of the employee’s place of residence;

- (9) To serve as witness or juror when summoned involuntarily by the court, provided he or she returns to duty immediately upon release by the court. However, if the employee’s appearance in court is in his or her own interest, either as appellant, defendant, or witness, leave of absence with pay, without pay. or compensatory time off must be documented. An employee called as a court witness in his or her official capacity, whether on behalf of the government or of a private party, is in an official-duty status;
- (10) When working conditions or extenuating circumstances exist beyond the control of management, not to exceed a maximum grant. of 4 hours. Excused absence in this category should normally not exceed 4 hours. However, it may be extended for the duration the conditions or circumstances such as when inclement weather prevents reporting to work.

History: Rule 11-84, eff 19 Dec 84, (part); and Rule 6-87. Eff 14 May 87, § 1.

4.2412 Administrative Leave.

Repealed by Rule 6-87 § 3.

4.2413 Unauthorized Absence.

Unauthorized absence shall be treated as absence without pay and may be grounds for disciplinary action.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2414 Workers’ Compensation Recipients.

- (a) Earning of Credits. An officer or employee who is absent from work because of injuries/illnesses incurred within the scope of his or her employment and who is receiving workers’

compensation wage loss replacement benefits such as temporary total disability and temporary partial disability payments, shall continue to earn vacation and sick leave credits as though he or she was not absent but performing the duties of his or her regular employment.

(b) Use of Credits.

- (1) An employee with accrued sick leave credits who is absent from work and who is receiving workers’ compensation wage loss replacement benefits shall be entitled to receive an additional amount, charged to sick leave, which would bring his or her total payment to a sum equal to the employee’s regular salary.
- (2) In the event the employee does not have any accrued sick leave credits, he or she may elect to use accrued annual leave credits to bring his or her total payment to a sum equal to the employee’s regular salary.
- (3) An employee is entitled to use the sick and annual leave credits earned during the period of absence from work.

History: Rule 11-84. eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 25 – RETIREMENT BENEFITS

Sections

- 4.2501 ASPA employees eligible to receive retirement benefits.

4.2501 ASPA Employees Eligible to Receive Retirement Benefits.

All employees of ASPA are eligible to receive retirement benefits through the ASG Employee Retirement Plan, according to provisions of the Plan as specified by Chapter 7.14 A.S.C.A.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 26 – INCENTIVE & TENURE AWARDS

Sections:

- 4.2601 Purpose of incentive awards.

- 4.2602 Budgeting-Incentive awards committee-Award-approval authority.
- 4.2603 Suggestions award.
- 4.2604 Superior performance award.
- 4.2605 Special act or service award.
- 4.2606 Group awards.
- 4.2607 Tenure award.
- 4.2608 Operator of the month award.

efficiency and economy of ASPA operations.

(c) It is the responsibility of the chairman of the incentive awards committee, who is a member of the ASPA management staff, to:

(1) Receive and review proposals and nominations for clarity and merit, prior to acceptance by the incentive awards committee for evaluation and subsequent authorized action;

(2) Develop ways and means of stimulating interest and participation in the incentive awards program on the part of both employees and management.

(d) Authority for final approval of all cash awards shall rest with the Executive Director.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2601 Purpose of Incentive Awards.

It is the policy of ASPA to provide a method which affords recognition of exceptional skills, resourcefulness, or exceptional acts of employees. The purpose of the incentive awards program, therefore, is to provide a device by which recognition may be afforded an employee or a group of employees who make suggestions which, when adopted, will save time and/or materials for the agency, thus reducing costs, and to provide recognition of employees who perform special acts or services in the public interest which reflect favorably on the image and reputation of the agency.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2602 Budgeting-Incentive Awards Committee-Award-Approval Authority.

(a) It is the responsibility of the business finance manager, after consultation with department heads and the Executive Director, to budgets annually a specified fund for payments of cash awards under the program.

(b) It is the responsibility of a representative committee, known as the incentive awards committee and consisting of at least 3 but not more than 5 members appointed by the Executive Director, to serve on a rotating basis to:

(1) Investigate and evaluate contributions for improving ASPA operations, as well as other incentive award proposals, and to recommend their approval or disapproval to the Executive Director on the basis of a simple majority opinion;

(2) Encourage supervisors and their subordinates to participate in improving the

4.2603 Suggestions Award.

An employee is eligible to be considered for a cash award by presenting to the chairman of the incentive awards committee, in writing, his or her suggestions for improvement of ASPA operations.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2604 Superior Performance Award.

A cash award may be made when a career service employee's or contract specialist's performance over a 6-month period substantially surpasses the normal requirements of his or her position or he or she performs a special assignment in above average manner without adversely affecting his or her regular work, provided he or she is nominated in writing, within 6 months of the period of performance in question, by an appropriate supervisor, and such nomination is endorsed and submitted to the chairman of the incentive awards committee by the head of the employee's department.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2605 Special Act or Service Award.

A special act or service may be contributed during an emergency, in connection with a special program or activity, or by creative efforts important to administration, science, or research and characterized as a nonrecurring situation. Any employee is eligible

to be considered for a special act or service cash award, provided he or she meets the criteria described in this section and he or she nominated not more than 6 months after the completion of the special act or services concerned, in writing, and such nomination is endorsed and submitted to the chairman of the incentive awards committee by the head of the employee’s department.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2606 Group Awards.

When a contribution has been made by more than one employee or by a group of employees, all who have contributed, including supervisors, may share equally or proportionately in the group cash award; however, the total amount of the award is as if made to an individual. Where individual shares of such group cash awards appear inappropriate, the incentive awards committee shall determine the amount of the award.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2607 Tenure Award.

Effective on and after January 6, 1980, employees who are awarded service certificates will also receive a tenure award in cash as follows:

- (1) Twenty-year certificate, \$500
- (2) Thirty-year certificate, 5750;
- (3) Forty-year certificate, \$1,000;
- (4) Retirement certificate, \$100.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2608 Operator of The Month Award.

The ASPA Advisory Committee, consisting of all managers and supervisors, recognizes an operator each month as Operator of the Month. The Advisory Committee uses two forms to evaluate operators, a daily report and a weekly inspection report.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 27 – CONDUCT

Sections:

- 4.2701 Responsibility and department-off-the-job conduct.
- 4.2702 Misconduct.

- 4.2703 Subordination to authority.
- 4.2704 Selling or soliciting.
- 4.2705 Outside business activity.
- 4.2706 Community and professional activities.

- 4.2707 ASPA property.
- 4.2708 Gifts.
- 4.2709 Information.
- 4.2710 Revolutionary organizations.
- 4.2711 Political affiliation.
- 4.2712 Political activity.
- 4.2713 Financial responsibility.
- 4.2714 Contracts with employees.
- 4.2715 Financial interests.

4.2701 Responsibility and Department-Off-The-Job Conduct.

It is the policy of ASPA to urge its career service employees and contract specialists to cultivate those personal qualities which characterize a good employee’s loyalty to ASPA: a sense of responsibility for the public trust and a standard of personal deportment which is a credit to the individuals themselves and to the service. Off-the-job conduct is a concern to ASPA if it reflects adversely upon the dignity, integrity, and prestige of the agency.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2702 Misconduct.

Any criminal, dishonest, immoral, or any other conduct on the part of an employee which would adversely affect ASPA will be cause for his or her removal from employment.

Gambling or the use of alcoholic beverages by employees in ASPA buildings, construction sites, or offices will not be tolerated.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2703 Subordination to Authority.

An employee is required to carry out the announced policies and programs of ASPA. While policies related to his or her work are under consideration, he or she may, and is expected to, express his or her opinions and points of view, but once a decision has been rendered by those in authority, he or she will be expected unreservedly to assure the success of programs which it is his or her responsibility to

effectuate. If he or she fails to carry out any lawful rule, order, or policy or deliberately refuses to obey the proper requests of his or her superiors who have responsibility for his or her performance, he or she is subject to appropriate disciplinary action.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2704 Selling or Soliciting.

Employees and other persons are prohibited from selling or soliciting for personal gain within a building occupied or used by ASPA without proper permission. This prohibition does not apply to:

- (1) Authorized or 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.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2705 Outside Business Activity.

An employee shall not engage in any business activity or work either in the capacity of employee or otherwise, which prevents an employee from devoting his or her primary interests, talents, and energies to the accomplishment of work for ASPA or tends to create a conflict between the private interest of an employee

and his or her official responsibilities. The employee must notify his or her department head of any outside work or activity. If the department head finds there is a conflict of interest the employee must choose between jobs.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2706 Community and Professional Activities.

Employees are encouraged to participate in activities of professional societies and of civic organizations whose purpose and objectives are not inconsistent with those of ASPA.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2707 ASPA Property.

- (a) Employees shall be held accountable for ASPA property entrusted to them for their official use. It is their responsibility to protect and conserve

ASPA property, including motor vehicles and other self-propelled equipment, and to use it economically and for official purposes only. The following rules apply to all ASPA-owned or ASPA-leased motor vehicles and other self-propelled equipment:

- (1) All ASPA vehicles or equipment are to be used for official business only.
 - (2) No ASPA vehicles shall be issued to any employee of the agency who does not have a valid driving permit, and no other self-propelled equipment shall be issued to any person other than a qualified operator of the equipment.
 - (3) No passengers or riders are to be transported unless they are on official ASPA business or are employees of ASPA.
 - (4) A valid driving permit must be in the driver's possession at all times while operating an ASPA vehicle.
 - (5) All accidents and traffic citations must be reported by the driver or operator to his or her immediate supervisor within 24 hours of the accident or citation.
 - (6) Any department permitting an employee without a valid driving permit to drive an ASPA vehicle shall be held responsible for any damage or liability incurred as a result of an accident in which such employee is involved.
 - (7) Employees using ASPA vehicles after hours must first fill out an after-hours usage request at the ASG motor pool. ASG will send a daily notice of authorized after-hours usage to the police department for surveillance purposes.
- (b) The rules pertaining to motor vehicles and other self-propelled equipment are the established rules of the Executive Director.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2708 Gifts.

An employee shall not accept from or bestow upon any person or organization with which he or she 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 an official superior nor accept such a gift, except as specifically authorized by law or as cited in this chapter of these regulations. Except as specifically authorized by law, employees are not authorized to accept from private sources on behalf of ASPA voluntary donations or cash contributions for travel expenses or the furnishing of services in kind, such as hotel accommodations, meals, and travel accommodations. This exception does not apply to approved scholarship grants, etc., which ASPA has approved and supervises.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2709 Information.

It is the policy of ASPA to accord the public free access to certain information about its activities. 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 presently in effect. If an employee is requested to give information outside the scope of his or her authority, he or she should refer the request through the immediate supervisor to his or her department head. Inquiries from the press, radio, or TV should be referred to the department head or other top management.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2710 Revolutionary Organizations.

An employee may riot knowingly advocate the overthrow of the constitutional form of government through membership in any organization which asserts the right to militate against the United States, ASG, or ASPA.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2711 Political Affiliation.

No person with authority to take or recommend a personnel action relative to a person in, or an eligible applicant for, a position at ASPA may make inquiry concerning his or her political affiliation. All disclosures concerning political affiliation shall be ignored except membership in political parties or organizations constituted by law as a disqualification for ASPA employment. Except as may be authorized

or required by law, discrimination may not be exercised, threatened, or promised by any person against or in favor of an employee in, or an eligible applicant for, a position at ASPA because of his or her political affiliation.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2712 Political Activity.

Employees shall not engage in unlawful political activities as defined in 7.0807 A.S.C.A., (see Appendix I). Where doubt exists as to the legality of certain activities, the employee shall request a ruling in writing from the Executive Director.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2713 Financial Responsibility.

Employees of ASPA are expected to satisfy their financial commitments. Failure to meet one's obligations reflects adversely on one's standing as an ASPA employee.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2714 Contracts with Employees.

Because contracts with its own employees are considered to be against public policy, such contracts are not permitted at ASPA except where it is clearly shown that the interests of ASPA are the 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 forth by rules promulgated by the Executive Director.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2715 Financial Interests.

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, employees are free to engage in lawful financial transactions to the same extent as other citizens.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 28 – TERMINATION, LAYOFF & ADVERSE ACTIONS

Sections

- 4.2801 Discipline policy generally-Scope of reasons for removal.
- 4.2802 Removal, suspension, demotion of career employees.
- 4.2803 Probational or trial employees.
- 4.2304 Involuntary reassignment.
- 4.2805 Absence without leave-Abandonment of position.
- 4.2806 Resignation.
- 4.2807 Other termination actions.
- 4.2808 Layoff-Reduction-in-force.
- 4.2809 Clearance for terminating employees.

4.2801 Discipline Policy Generally-Scope of Reasons For Removal.

It is the policy of ASPA to ensure that employees whose performance of their duties or conduct are not satisfactory are removed from their position promptly, that those who are guilty of misconduct not sufficiently serious to justify removal be properly disciplined, that voluntary and involuntary separations be handled in an orderly manner, and that employees be protected against arbitrary or capricious action. Removal may be effected for any of the reasons but not limited to those referred to in these regulations and in 7.0801 through 7.0807 A.S.C.A.

History: Rule 11-84. eff 19 Dec 84. (part).

4.2802 Removal, Suspension, Demotion of Career Employees.

- (a) Employees in the career service, not serving probationary or trial periods and who are not serving under temporary appointments or contracts, shall not be removed, suspended, or involuntarily demoted except for such cause as will promote the efficiency and the good of ASPA.
- (b) Discrimination shall not be exercised in suspensions, removals, or demotions because of an employee’s religious belief or affiliations, marital status except as may be required by this title, race, ethnic background, or political affiliation except as may be required by law, and

physical handicap unless an individual is unable to perform the duties of the position.

- (c) Like penalties shall be imposed for like offenses whenever removals, suspensions, or demotions are made or when other disciplinary actions are taken.
- (d) One of the following procedures shall be followed in cases of removal, suspension, and involuntary demotion:
 - (1) The employee shall be notified, in writing, of the charges against him or her. and of the corrective action recommended to the Executive Director to be taken against him or her.
 - (2) The notice shall set forth, specifically and in detail, the charges preferred against the employee.
 - (3) The employee shall be allowed 3 days for filing a written answer to such charges and for furnishing affidavits in support of his or her answer, or the employee may request and shall be given the opportunity to reply orally.
 - (4) If the employee answers the charges, his or her answer must be considered by the agency. Following consideration of the answer, the employee must be furnished with the agency’s decision, in writing, as to the action to be taken.
 - (5) The agency shall forward to the director of the Office of Manpower Resources copies of the charges, answer, and reasons for adverse action, all of which shall be made a part of the employee’s official personnel file.
- (e) The employee shall be retained in an active duty status during the period of notice of proposed action except as follows:
 - (1) The employee may be placed on annual leave when the Executive Director does. not consider it advisable from an official standpoint to retain him or her in an active duty status during the advance notice period.

- (2) When the employee is not placed on annual leave and the circumstances are such that his or her retention in an active duty status may result in damage to ASPA property, or may be detrimental to the interests of ASPA or injurious to the employee, fellow workers, or the general public, he or she may be temporarily assigned duties in which these conditions will not exist, or be placed on excused absence, and be required to submit a reply to the charges within 24 hours. The employee may be placed on immediate suspension pending removal thereafter if appropriate in the opinion of the Executive Director.
- (f) The Executive Director shall advise the employee in writing of the removal action to take effect 30 calendar days from the date of the notice, the reasons therefor, and that he or she may request a hearing before the board within 10 calendar days of the date of receiving the notice. ASPA shall follow the general format of the ASG sample letter for employee notification of suspension or termination with revisions to reflect ASPA's personnel organization.
- (g) If the employee does not appeal or if he or she appeals and the appeal is denied, his or her removal shall be processed finally in accordance with instructions applying within ASPA. ASPA shall follow the guidelines set forth in the ASG personnel rules entitled "Conduct of Government Employees-Disciplinary Action."

History: Rule 11-84, eff 19 Dec 84. (part).

4.2803 Probational or Trial Employees.

Any employee serving a probationary or trial period shall be given a full and fair trial in the performance of the duties of the position to which appointed. Employees serving their original probationary period may be separated at any time during such period upon proper recommendation and 5 working days prior notice, without right of appeal.

- (a) Supervisors shall, carefully observe the performance and conduct of employees who are serving the probationary period to determine whether the retention of such employee is in the best interests of ASPA.

- (b) Three months prior to the expiration of an employee's probationary period, the Executive Director shall determine whether the employee is to be retained. If the employee is not to be retained, the Executive Director and the employee's immediate supervisor shall advise the employee in writing. The Executive Director shall proceed with the separation action as follows:

- (1) Issue a written notice to the employee advising him or her that he or she will be separated as of a particular date, the reason(s) therefor, and that he or she has no right of appeal, except in cases of alleged discrimination because of sex, creed, color, or marital status.
- (2) The chapter of these regulations on recruitment and placement addresses separation of a career service employee serving a new trial period.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2804 Involuntary Reassignment.

- (a) The Executive Director may move any employee involuntarily from one position to another, which may or may not involve a change in class, without the right of appeal, provided no reduction in grade or rate of compensation is involved.
- (b) An involuntary reassignment is considered an "administrative reassignment" with the best interests of the agency as the primary objective.
- (c) Failure of an employee to comply with an involuntary (administrative) reassignment shall result in immediate separation.
- (d) Any employee so reassigned may grieve through the agency's grievance procedures.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2805 Absence Without Leave-Abandonment of Position.

When an employee fails to report for duty or to return from leave for ten or more consecutive workdays, he or she may be considered to have abandoned his or her position. Care must be taken, however, before a final decision is made, to ascertain that the employee

has truly abandoned the position. The supervisor should make an effort to contact the employee to determine his or her intentions. If the employee intends in fact to resign, this should be the action taken rather than to term the action abandonment of position, as future employment opportunity with ASPA or ASG may be affected. If the supervisor is unable to ascertain the employee's intention concerning return to duty, processing of abandonment of position is proper and should be handled as follows:

- (a) Action by Operating Officials. The employee's department head shall recommend to the Executive Director, using a position action request form, that the employee be separated for abandonment of position. Under the "Remarks" section, list when (date) and what effort the supervisor (name) made to contact the employee, and the results of that effort.
- (b) The Executive Director shall proceed with the separation action in accordance with these regulations.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2806 Resignation.

An employee may resign at any time subject to the following conditions:

- (a) Notice. The employee must notify his or her department head, in writing, of his or her resignation at least 2 weeks prior to the date of separation unless the department head waives such requirement.
- (b) Withdrawal. Once submitted, the resignation is binding upon the employee and it may be withdrawn only with the department head's consent.
- (c) In lieu of separation for cause. An employee may resign with prejudice in lieu of removal or while issuance of charges leading to removal are pending. In such instances, the department head must indicate the abnormal nature of the resignation on the request for personnel action.
- (d) Rehire. An employee who resigns without prejudice is eligible for reinstatement at any time, assuming an opening exists and he or she

has completed the probationary period. If the employee has not completed the probationary period or if, within the five years preceding the date of his or her current application, he or she resigned from ASPA in lieu of removal, he or she will compete through regular competitive channels and if selected shall serve a new probationary period.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2807 Other Termination Actions.

- (a) A person serving under a temporary appointment may be terminated at any time prior to the expiration of the temporary appointment, but must be terminated on the NTE (not-to-exceed) date unless approval has been granted by the Executive Director for extension of the appointment.
- (b) A noncareer employee who has failed to qualify for a probational or career service appointment to continue his or her employment may be terminated by the agency upon notification to his or her department that he or she has failed to qualify.
- (c) An employee who, during a leave of absence, accepts other employment which is contrary to the purpose for which leave is granted may be terminated.
- (d) An employee who fails to provide his or her department head with proper notice of his or her resignation may be terminated with prejudice.

History: Rule 11-84, eff 19 Dec 84, (part).

4.2808 Layoff-Reduction-In-Force.

- (a) When there is an impending layoff because of lack of funds, curtailment of work, or reorganization, the department head shall notify the Executive Director and the affected employee(s) in writing as soon as possible but at least 60 days in advance of the layoff unless cutoff of funds requires a shorter notice period, in which case such requirement must be stated in writing.
- (b) The provision of this section concerning placement rights are applicable to career service employees whose positions are to be abolished

and to a career service employee who will be displaced by another career service employee. The provisions of this section also apply to a career service employee who is displaced by a career service employee returning from military duty, furlough, or leave.

(c) The Executive Director shall exhaust all possibilities in placing the employee within the agency before a reduction-in-force is effectuated.

(1) When there is no appropriate vacant position in which the career service employee may be placed, the agency shall follow the order below in determining which employee shall be displaced:

(A) A noncareer service employee in the same class and pay range. When there is more than one such employee, layoff will be, first, of:

(I) An employee serving under emergency or temporary appointment;

(II) An employee serving a probational appointment;

(III) A career service employee who occupies a position in the same class and grade and has the least seniority based on the service computation date;

(B) A noncareer service employee who occupies a position in another class at the same pay range, in accordance with divisions (A) (I), (II), and (III) of this subsection, provided the displacing employee meets the minimum qualifications for such position;

(C) A noncareer status employee who occupies a position in the same series, but a lower class and pay range in accordance with divisions (A) (I), (II), and (III) of this subsection;

(D) A noncareer status employee who occupies a position in a different series and lower class for which the

displacing employee meets minimum qualifications in accordance with divisions (A) (I), (II), and (III) of this subsection.

(d) If the Executive Director is unable to place the employee, he or she shall immediately notify the director of the Office of Manpower Resources, who will place the employee on ASG’s reemployment register, and effect territory-wide RIF procedures. The Executive Director will issue the two-week notice of termination and place the employee on ASPA’s reemployment register.

History: Rule 1 1-84, eff 19 Dec 84. (part).

4.2809 Clearance for Terminating Employees.

The standard ASG clearance form must be completed by all terminating employees and kept on file by ASPA.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 29 – APPEAL, GRIEVANCE & ADMINISTRATIVE REVIEW

Sections:

- 4.2901 Appeal-Right of career employees.
 - 4.2902 Appeal-Procedure.
 - 4.2903 Grievances.
 - 4.2904 Administrative review.
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4.2901 Appeal-Right of Career Employees.

Career employees may file appeals on matters concerning their suspension, involuntary demotion, or removal.

History: Rule 11-84, eff 19 Dec 84. (part).

4.2902 Appeal-Procedure.

(a) Form and Deadline. All appeals must be made in writing and state clearly the basis for appeal to the chairman of the board and must be filed within 10 calendar days after the effective date of the action appealed, except in the case of a reduction-in-force. The appeal should also include the employee’s request for a hearing if he or she desires and is entitled to one.

- (b) Scheduling Hearing. The written appeal shall be on the agenda of the board’s next meeting. If the appeal involves a removal, suspension, or demotion, however, the appeal hearing shall be arranged so as to effect a board decision within 30 days after appeal. However, the chairman of the board may deny a hearing when a hearing is impractical by reason of unusual location or other extraordinary circumstances.
- (c) Hearing Procedures. Hearings before the board shall be conducted in accordance with the procedures promulgated by the board.
- (d) Counsel and Openness. Attendance of other interested parties and/or counsel may be limited by the chairman of the board of directors if good order, justice, and fairness will be promoted.
- (e) Death of Appellant. A proper appeal filed before the death of the employee must be processed to completion and adjudicated. If appropriate, the board 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.
- (f) Adverse Action Appeal. If the decision is to take adverse action and the employee appeals this action, the appeal must then go to the director of the chairman of the board for a final decision at the administrative level.
- (g) File Access. Prior to the hearing the entire appeal file shall be made available upon request to the employee and his or her representative except when a file contains medical records concerning a physical or mental condition of which a prudent physician would hesitate to inform the person concerned.
- (h) Notice of Hearing. All parties shall be served with notice at least 10 days before the date set for the hearing. The notice shall state the time and place of such hearing.
- (i) Depositions. A party who desires to take the deposition of any person in an oral examination shall give reasonable notice of not less than 3 days in writing to the board and all parties. The notice shall state the time and place of taking the deposition and the name and address of each person to be examined.
 - (1) The deposition officer shall be a person who is authorized to administer oaths by the laws of the territory of American Samoa.
 - (2) The officer shall certify on the deposition that the witness was duly sworn by him -or her and that the deposition is a true record of the testimony given by the witness. 1-le or she shall then securely seal the - deposition in an envelope endorsed with the title of the proceedings and marked “Deposition of (here insert name of witness)” and shall promptly send it by registered or certified mail to the Chairman of the Board for filing. The party taking the deposition shall give prompt notice of its filing to all other parties.
- (j) Case Presentation and Testimony.
 - (1) The employee shall present his or her 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 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 may decline to permit such person to appear in a representative capacity in any proceeding before the board.
 - (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.
- (k) Conclusions. Within thirty days after the original notice, the board shall make and fully record in its permanent records findings 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 shall send a copy of the findings and conclusions to the employee at his or her address as given at the hearing or to a representative designated by him or her.

- (l) 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.
- (m) 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.
- (n) Correction of Classification. Correction of a classification decision which results in a promotion or demotion shall be handled as stated in the chapter in these regulations on recruitment and placement, specifically the section on "Promotion-Lateral movement Transfer Detail-Demotion." The board will determine the effective date of any such action.

History: Rule 11-34. eff 19 Dec 84 (part).

4.2903 Grievances.

- (a) Filing. Grievances may be filed orally or in writing by any person, at any point of contact within ASPA. If the grievance is misdirected (complaints about another department) the grievant shall be properly directed. The following types of action are typical of those which may be grieved, but is not all inclusive;
 - (1) Performance evaluation;
 - (2) Leave (denial);
 - (3) Promotion;
 - (4) Letters of reprimand;
 - (5) Reassignment;
 - (6) Increment (denial);
 - (7) Hours of work;

- (8) Discrimination or bias.
- (b) Procedure. ASPA shall have a three-part grievance procedure, as follows:
 - (1) Each grievance shall be placed in writing, and resolution attempted by the appropriate supervisor at the lowest level.
 - (2) Failing resolution, the grievance shall then be elevated to an uninvolved higher level in the agency and the grievant allowed to present testimony in his or her behalf in an informal hearing.
 - (3) If the recommendation of the informal hearing fails to satisfy the grievant, the case will be forwarded to the Executive Director for final decision. If the case is carried beyond this point by the grievant, it must be as an appeal to the board.
- (c) Exception. In cases involving suspension, demotion, or dismissal of a career service employee, no grievance is filed. The only appropriate and allowable employee response is an appeal to the board.

History: Rule 11-84. eff 19 Dec 84, (part).

4.2904 Administrative Review.

The Executive Director has responsibility for the recruitment, examination and certification of eligibles, and for the proper classification of positions to titles, grades and pay. Any person who believes his or her application to have been improperly evaluated and/or any employee who believes his or her position to have been improperly evaluated, may request in writing that his or her case be reviewed.

- (a) The request must indicate the person's basis for the belief that the application or position was improperly evaluated.
- (b) The request, to be acceptable, must be filed within 10 calendar days of the official notice to the employee.
- (c) The Executive Director shall cause the case to be reviewed and notify the person, in writing, of the findings upon review.

- (d) If still dissatisfied, the person may file an appeal, following the procedures outlined in these regulations.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 30 – CONTRACT SPECIALISTS

Sections:

- 4.3001 When hiring permitted-Employment agreement.
- 4.3002 Temporary contract specialists.
- 4.3003 Assignment-Recruitment- Selection.
- 4.3004 Compensation-Absence with pay-Review and reclassification.
- 4.3005 Transportation.
- 4.3006 Annual leave-Sick leave.
- 4.3007 Medical benefits.
- 4.3008 Termination for cause.
- 4.3009 Resignation-Termination without cause.
- 4.3010 Renewal of contract.
- 4.3011 Employment after term of contract.
- 4.3012 Conduct-Reassignment-Career service eligibility- Self-Employment.
- 4.3013 Grievances-Striking prohibited.
- 4.3014 Training.
- 4.3015 Work-product ownership- Discoveries and documents.
- 4.3016 Dependents defined-Family status reports.
- 4.3017 Immigration status-Departure upon termination.

4.3001 When Hiring Permitted-Employment Agreement.

When there are no qualified eligibles available for a given position, excepted appointments of qualified eligibles residing outside of American Samoa may be made by contract. The termination of a contract specialist’s employment are specified in the employment agreement he or she signs with ASPA. ASPA’s Executive Director will send a letter to ASG requesting a contract. The contract is prepared by ASPA and approved by the Executive Director before being returned to the Office of Manpower resources. Recruitment is then performed by ASPA. ASPA may ask ASG to assist in recruitment. If the contract is modified subsequent to the Executive Director’s

approval, an. ad Addendum is prepared by ASPA, approved by ASPA’s board of directors and forwarded to the Office of Manpower Resources for filing.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3002 Temporary contract specialists.

- (a) In addition to permanent contract specialists, ASPA will hire contract specialists to fill temporary positions or to work on temporary special projects. These temporary contract specialists are not entitled to career service status as defined by Chapter 7.13 ASCA (i.e., they do not accrue benefits or leave). All pay-merits to these employees are made through ASPA’s regular cash disbursements process and are not processed through the ASG payroll. The temporary contract specialists are subject to the same standards of conduct as any other ASPA employee.
- (b) A temporary service contract is prepared by ASPA. The contract is approved by the Executive Director and all employee records are maintained by ASPA. The contracts may be terminated upon 14 days written notice by either party.

History: Rule 11-84. eff 11 Dec 84. (part).

4.3003 Assignment-Recruitment-Selection.

The following are rules concerning contract specialists which are not contained in the standard contracts, or which require amplification:

- (a) Assignment of Duties. While the contract specialist is designated to serve in the position for which he or she signs, the needs of ASPA will determine other assignments and specific designations.
- (b) Recruitment Policy.
 - (1) Positions must be advertised locally prior to off-island, except that where the shortage of qualified eligibles is known in advance, recruitment may be performed simultaneously.
 - (2) ASPA may coordinate off-island recruitment efforts with the Office of Manpower Resources.

- (c) Selection Policy. Selection for contract positions must be made solely based upon fitness and merit, without regard to race, color, sex, age, religion, national origin, or politics.
- (d) Medical Examination. All selectees and their accompanying dependents shall be required to provide evidence of good health as shown by preemployment physical examinations, the reports of which shall be evaluated by the Director, Department of Health.
- (e) Verification of Qualifications. Acceptance by the Executive Director of verifications of the candidate's claimed qualifications and references, and any reports of interviews of candidates and married candidates' spouses, is required.

History: Rule 11-84, eff 19 Dec 84, (part).

**4.3004 Compensation-Absence with Pay-
Review and Reclassification.**

- (a) Compensation for positions filled by contract shall be in accordance with established ASPA salary rates based on the salary rates of the career service. Base salaries shall be taken from the appropriate ASPA salary schedule and the rules concerning same.
- (b) Contract specialists are not entitled to overtime compensation.
- (c) Contract specialists may be granted absence from duty with pay on those holidays recognized by ASPA.
- (d) If substantial changes are contemplated in the duties and responsibilities assigned to a contract specialist during the life of his or her agreement, ASPA may review and reclassify the contract position.
 - (1) If the change is to a vacant position which is not under the supervision of ASPA then ASPA will be made a party to the agreement and he or she will also sign the amendment form and personnel/payroll action request which authorizes the position change.
 - (2) If a change of position involves a change of grade and salary, then a lump-sum accumulated-leave payment will be made to

the employee at the salary rate in effect at the conclusion of his or her unamended term of service. The employee will begin to accumulate annual leave at the adjusted salary rate, commencing with the effective date of the contract amendment.

- (e) During the tenure of the contract, the contract specialist shall receive step increments as detailed in the section of these regulations which addresses classification and pay.

History: Rule 11-84, eff 19 Dec 84, (part).

4.3005 Transportation.

- (a) Entitlement at Hiring and Separation. ASPA will furnish transportation for the contract specialist and his or her dependents, his or her household goods and professional materials from his or her permanent residence to American Samoa. If the contract specialist has fully performed the terms and conditions for his or her agreement in a manner satisfactory to ASPA, ASPA will furnish transportation for the contract specialist, his or her dependents, his or her household goods and professional materials to his or her place of residence from American Samoa.
 - (1) The contract specialist and his or her dependents are authorized economy, jet air travel accommodations between the point of hire and American Samoa. Unless specifically authorized on the travel authorization, additional cost for superior accommodations or excess baggage shall be borne by the contract specialist.
 - (2) When a vacant contract specialist position is filled by a qualified nonresident candidate who is temporarily residing in American Samoa, no provision will be made by ASPA for his or her travel or shipment of household goods' to the territory. ASPA will contract to return him or her and any dependents to his or her preagreed permanent residence at the satisfactory conclusion of his or her employment.
 - (3) Non-ASPA furnished transportation expertises (private yacht, aircraft) incurred by a contract specialist and his or her dependents by travel to American Samoa to

report to duty may be reimbursed to him or her in amounts not to exceed that authorized for one-way, economy jet air fare as stipulated by ASPA travel rules. The request for reimbursement must be supported by receipts or other evidence of payment.

(4) The transportation expenses mentioned in his or her employment agreement shall constitute the measures of damages for a breach of his' or her agreement by the contract

(b) Remaining After Contract. If the contract specialist, with immigration approval, elects to remain in American Samoa upon completion of his or her contract, ASPA's obligation for return transportation and household shipment shall be forfeited.

(c) Property Allowed and Prohibited.

The weight allowance for the shipment of household effects is limited to that personal property essential to the comfort and convenience of the contract specialist and his or her dependents which may be transported legally in interstate commerce. It includes household furnishings, equipment and appliances, furniture, clothing, books, and similar property. Household effects do not include property which is for resale or disposal rather than for use by the contract specialist or members of his or her immediate family, nor does it include such items as motor vehicles, airplanes, trailers, boats, pets, livestock, cordwood, building materials, property intended for use in conducting a business or other commercial enterprise.

(1) The firearms laws in the United States differ from territorial legal restrictions. Weapons and ammunition of any kind are prohibited, including air guns, without prior licensing and registration.

(2) The only domestic pets which may be brought into the territory are dogs and cats from the mainland U.S., Hawaii, Guam, Trust Territory of the Pacific Islands, Australia, and New Zealand. Animals from the mainland, Guam and T.T.P.I. must be

quarantined for 120 days in Hawaii. The extensive rules pertaining to this matter are available from the department of agriculture: some are codified at Chapter 24.03 A.S.C.A.

(3) The importation, production, and use of hallucinogens and' potentially harmful drugs are strictly prohibited and punishable by law.

(d) Cash Payment. In lieu of authorized weight allowances for overland and ocean shipments, cash payments in accordance with the following schedule will be made to contract employees for those shipments for the purpose of effecting savings to ASPA.

Family Size	Estimated Weight Used for Calculations (pounds)	East of Mississippi	West of Mississippi
1	1,125	\$1,200	\$1,000
2	1,810	2,000	1,600
3	2,030	2,100	1,700
4	2,250	2,300	1,900
5	2,360	2,400	2,100

Special arrangements will be separately negotiated for contract employees not residing in the U.S. Any portion of a cash payment from this schedule that is not applied to the cost of household/professional effects shipment inures to the benefit of the employee. Employees will be issued cash reimbursements from the schedule upon arrival in the territory. Any exception for newly hired employees resulting in the issuance of a letter of credit to the selected shipping agency may be made only by the Executive Director.

(1) Standard insurance coverage that is provided by the packer and shipper is based upon net weight only. If the contract specialist wishes to insure on the basis of value, he or she must acquire additional insurance at his or her own expense.

(2) Customs rules applicable to the shipment of household effects must be observed for all travel. The contract specialist is responsible for compliance with the appropriate rules. Except for extenuating circumstances, he or

she is liable for additional charges imposed by customs or port authorities.

(e) **Renewal Benefits.** If the contract specialist's employment agreement is renewed:

- (1) A renewal bonus of \$1,000 will be paid for two years' renewal on the first pay period following the effective date of the new contract.
- (2) Round-trip, economy jet air transportation is authorized for himself or herself and any dependents.
- (A) A contract specialist who renews his or her contract may be authorized round-trip transportation to a point other than his original point of hire; however, ASPA will only pay up to as much as the cost of economy jet transportation directly to his or her original point of hire. The contract specialist is required to pay for any extra travel charges in excess of his or her allowance.
- (B) If the contract specialist's selected travel routing is at less cost than that to the original point of hire, the contract specialist is not entitled to the difference.
- (C) All travel purchased by the contract specialist with the travel authorization must be used on the same trip. For example, if a renewing contract specialist is authorized round-trip fare to San Francisco and decides to go only as far as Hawaii and return, he or she has exhausted all travel authorized by his or her travel authorization form. He or she may not, at some future date, use the difference in fare to obtain further travel.

(f) **Completion-of-contract Entitlement.** If the contract specialist satisfactorily fulfills the conditions of his or her employment agreement, he or she and any dependents are entitled to:

- (1) One-way, economy jet air transportation to his or her permanent residence;
- (2) Unaccompanied air freight allowances provided by the original travel authorization;

(3) Ocean freight shipment allowance for household effects as provided by the original travel authorization;

(4) Additional ocean freight shipment allowance for professional materials as provided by original travel authorizations.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3006 Annual leave -Sick leave.

(a) A contract specialist whose employment agreement is on a 12-month basis shall accrue annual leave at the rate of one working day for each full biweekly pay period during the tenure of his or her agreement, regardless of the amount of time worked during each pay period, except for periods of leave without pay.

- (1) Provided that he or she is fulfilling all of the terms and conditions of his or her agreement in a manner satisfactory to ASPA and, if ASPA determines that his or her services can be spared, he or she may be granted leave upon his or her request at any time.
- (2) He or she may be administratively required by ASPA's take leave at any time.
- (3) At the expiration of his or her agreement, the contract specialist will be paid in a lump sum for a maximum of 60 days of unused, accumulated annual leave, computed at the salary then in effect.
- (4) Only if it is for the convenience of ASPA, the contract specialist may elect to apply accumulated annual leave in total or in part in lieu of lump sum payment to an equivalent number of days' absence immediately preceding and extending to the expiration date of his or her agreement. He or she will not, however, be entitled to accrue annual leave while on terminal leave.

(b) The contract specialist shall accrue sick leave with pay at the rate of one-half day per full biweekly pay period and may be allowed such additional sick leave without pay as ASPA at its discretion may deem necessary.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3007 Medical Benefits.

(a) The contract specialist and his or her dependents will be entitled to medical and dental services in American Samoa to be furnished by ASG. Such services may be subject to a nominal service charge to be paid by the contract specialist. Medical services shall be within the limits of ASC's personnel, supplies, and facilities available from time to time in American Samoa. The contract specialist and his or her dependents will also be entitled to off-island medical care to the same extent furnished from time to time to American Samoans by ASG; provided that the contract specialist 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; and provided further that return travel of the discharged patient, or an authorized accompanying family member, will not be provided should it be determined, in the judgement of ASG's Director, Department of Health, that due to the health of the contract specialist or the dependent, the contract specialist should not remain in American Samoa, in which event the entitlements upon normal' expiration of the term of service will be provided.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3008 Termination for Cause.

ASPA may discharge the contract specialist and terminate his or her employment agreement for cause, including dereliction or unsatisfactory performance of duty or misrepresentation or conviction of any criminal offense. Pending a hearing and final determination, the contract specialist may be suspended without pay or other benefits.

(1) Removal shall be recommended to the Board of Directors by the Executive Director in writing, supported by a written account of the circumstances and events underlying the recommendation.

(2) Upon receipt of the written justification recommending the removal of an employee, the Board of Directors shall give careful consideration to

such recommendation and all background information of record. In this connection, the Board of Directors is expected to consult with the ASPA employee concerned.

(3) If the Board of Directors considers the recommendation to be reasonable, it shall advise the employee in writing of:

(A) The charges brought against him or her;

(B) The fact and effective date of his or her suspension without pay.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3009 Resignation-Termination Without Cause.

(a) If the health of the contract specialist or that of any dependents, through no fault of his or her own, becomes so impaired that, in the judgment of ASG's Director of Health, he or she should not remain in American Samoa, he or she may resign and receive full benefits according to a contract specialist whose employment agreement has been satisfactorily fulfilled. ASPA will not be liable for the return travel of the contract specialist, any dependents, household goods, and personal effects if the physical disability is a direct result of excessive and nonprescribed use of alcohol or harmful drugs.

(b) If an unforeseen personal emergency should arise which requires the immediate presence of the contract specialist outside of American Samoa and such emergency is verified to the satisfaction of ASPA by the American Red Cross or other appropriate agency, the contract specialist may resign and be entitled to the full benefits to which he or she would have been entitled upon normal expiration of the term of service under his or her employment agreement.

(c) Should the contract specialist breach his or her agreement by resignation from his or her employment with ASPA: prior to the end of the contracted tenure (or during the first half of his or her term of service), he or she shall forfeit all rights to transportation for himself or herself, any dependents, and their personal effects and household goods and shall be obligated to repay to ASPA such expenses as ASPA may have incurred or paid to him or her on this account in connection with his or her term of service.

Should the contract specialist's resignation from his or her obligations to his or her agreement occur after one year's contracted tenure (or during the second half of his or her term of service), he or she shall forfeit all rights to transportation for himself or herself, any dependents, and their personal effects and household goods but shall not be obligated to repay to ASPA such expenses as ASPA may have incurred or paid to him or her on this account in connection with his or her term of service.

(d) Upon 30 days' notice to the employee, ASPA may terminate his or her employment agreement at the discretion of ASPA without recourse on the part of the employee. In the case of termination of employment as provided in this subsection, the employee shall be entitled to transportation, subsistence, and other benefits to which he or she would be entitled upon normal expiration of the term of service under his or her agreement.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3010 Renewal of Contract.

(a) Contract renewal is the prerogative of ASPA and is based solely upon need and performance of a contract specialist as determined by ASPA and is contingent upon approval of the contract specialist's continued employment by the Board of Directors.

(b) A contract specialist must address his or her request for contract renewal in writing to the Board of Directors not less than 90 calendar days prior to the expiration date of his or her present agreement.

(c) Renewal of contract for a one-year period will be limited to one renewal unless prior approval is obtained in writing from the Board of Directors.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3011 Employment After Term Of Contract.

If employment of the contract specialist continues beyond the term or service specified in his or her agreement without the execution of a new agreement, such employment shall be deemed to be at will and may be terminated by either party on reasonable notice to the other. All of the terms and conditions of his or her agreement, except those pertaining to termination for cause, shall continue in effect during such extended period of employment.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3012 Conduct-Reassignment-Career Service Eligibility-Self-Employment.

(a) Contract specialists are expected to conduct themselves both on and off the job as employees of ASPA. Rules regarding outside work, conflict of interest, and political activities published elsewhere in these regulations apply equally to contract employees.

(b) A contract specialist is precluded by and for the duration of his or her contracted term of service from competing for other vacant positions within ASPA or ASG. He or she may, however, request reassignment to a vacant position and his or her request may be granted at the discretion of the Executive Director and the selecting authority when to do so is in the interest of ASPA.

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

(d) Contract specialists shall not engage in self-employment in American Samoa either directly or indirectly, in any form whatsoever, during the terms of their agreements. See Appendix 17.06 A.S.C.A.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3013 Grievances-Striking Prohibited.

(a) Contract specialist grievances shall be processed the same as those made by other employees. In case of an alleged violation of the contract specialist's agreement, his or her continued employment shall not be deemed a waiver by either party of his or her claim. ASI5A consents to be sued on account of any matter of dispute arising over his or her agreement but only in the High Court of American Samoa.

(b) The contract specialist agrees by contract not to participate in any strike against ASPA during his or her term of service.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3014 Training.

Nominations for training of contract specialists shall be submitted to the Executive Director or the Board of Directors, who shall retain discretion for approval or disapproval. No contract specialist shall be recommended for training to gain skills or knowledge which he or she might reasonably be expected to possess in order to have been selected for his or her position.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3015 Work-Product Ownership-Discoveries and Documents.

Any and all inventions, improvements, discoveries, documents, reports, memoranda, and data developed by the contract specialist relating to his or her position with ASPA will be the sole and absolute property of ASPA and ASPA will be the sole and absolute owner of all patents, copyrights, or other rights in connection therewith.

History: Rule 11.84, eff 19 Dec 84. (part).

4.3016 Dependents Defined-Family Status Reports.

Dependents, as defined, shall be interpreted to mean the spouse and minor dependent children of the contract specialist, who are identified as such at the time his or her agreement is executed and who will reside with him or her in American Samoa for at least one year of the term of his or her agreement. It is the responsibility of the contract specialist to make known to the Executive Director changes in his or her family status as they occur.

History: Rule 11-84. eff 19 Dec 84. (part).

4.3017 Immigration Status-Departure Upon Termination.

- (a) A contract specialist, by virtue of his or her employment with ASPA, obtains residency status within the territory for the duration of his or her agreement or term of service. In the event of the termination of his or her agreement for any reason whatsoever, the contract specialist contractually agrees to depart from the territory within 30 days from the termination date.
- (b) Contract specialists who are not United States citizens must register annually as alien residents

with the immigration division of the department of legal affairs of the ASG.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 31 – EQUAL OPPORTUNITY-AFFIRMATIVE ACTION

Sections:

- 4.3101 Policy generally-American Samoan preference.
 - 4.3102 Affirmative action conformance to federal provisions.
 - 4.3103 Enforcement Responsibility-Staff, Subcontract, or Contracting Agency Compliance.
 - 4.3104 Compliance officer.
 - 4.3105 EEO coordinators-Publicity.
 - 4.3106 Contract-seeker compliance-Third Parties-Monitoring.
 - 4.3107 Grievances-Appeals.
 - 4.3108 Equal Employment Opportunity Affirmative Action Plan.
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4.3101 Policy Generally—American Samoan Preference.

- (a) It is the policy of ASPA to provide and promote equal opportunity in employment to people without discrimination because of race, creed, color, sex, religion, national origin, age, handicaps, marital status, political affiliation, or other nonmerit consideration.
- (b) Pursuant to 7.0204 (b) A.S.C.A., and as an integral part of the equal employment opportunity policy, ASPA shall employ residents of American Samoa who are American Samoans or United States nationals, and shall employ other persons only when no American Samoans or United States nationals who meet the minimum qualifications for a particular class of work can be found. This policy is initiated in recognition that:
 - (1) It is necessary to identify and deal with discrimination and obstacles to equal employment opportunity, intended or unintended;

- (2) Well-conceived, planned, and realistic actions are necessary to provide for achieving true equality of opportunity;
- (3) These actions must be aggressively pursued;
- (4) An effective periodic self-evaluation is needed to ascertain whether predetermined goals are being met; and
- (5) This evaluation will result in updating the action plan as necessary, to meet changing needs and to effectively resolve problems.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3102 Affirmative Action Conformance to Federal Provisions.

An affirmative action plan has been prepared for use by ASG in its efforts to provide equity in employment to women, minors, and other victims of discrimination. ASPA will follow ASG's affirmative action plan. This EEO-AA plan is intended to conform to federal requirements of Title VI of the Civil Rights Act of 1964, §808 of the Civil Rights Act of 1968, Executive Orders 11063, 11246, and 11375, §109 of the HUD Act of 1974 and §3 of the HUD Act of 1968.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3103 Enforcement Responsibility-Staff, Subcontract, or Contracting Agency Compliance.

- (a) The responsibility and authority for the enforcement of this policy pertaining to the ASPA Affirmative Action Plan and its goals are vested in the Executive Director, who will be responsible for the implementation, administration, and compliance of the EEO policies and AA plan.
- (b) All ASPA staff, subcontractors, and contracting agencies are required to comply with this policy with reference to recruitment, hiring, training and compensation.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3104 Compliance Officer.

The EEO compliance officer (EEOCO), appointed within the Office of Manpower Resources, will have

the responsibility of promoting, coordinating and monitoring ASPA's plan. The duties and responsibilities of the EEOCO as defined in the ASAC are as follows:

- (a) Following the policy statement and Affirmative Action Plan, providing an effective procedure to communicate EEO procedures;
- (b) Acting as the focal point of all EEO activities, particularly in the development and implementation of the Affirmative Action Plan;
- (c) Providing continuous assistance to management in collecting and analysis of employment data, identifying problem areas, setting goals and timetables, and developing programs to achieve goals. Following through on programs to assure set goals are accomplished on time;
- (d) Consulting with and advising all appropriate ASPA staff on matters pertaining to the administration of the EEO policies;
- (e) Submitting to the director of the Office of Manpower Resources quarterly progress reports pertaining to ASG's and ASPA's EEO program;
- (f) Assisting ASG and ASPA administrators and contractors in preparing effective programs, criteria, compiling and disseminating public information for the Governor and his department/agency heads including the Executive Director of ASPA, implementing equal employment-opportunity policies and open occupancy statements, directing preparation of related correspondence including recommendations on EEO, investigating formal and informal complaints of alleged discrimination by parties to agreements and recommending procedures to ensure compliance with all ASG and ASPA contract provisions which promote equal opportunity objectives, and attending preaward and preoccupancy conferences;
- (g) Implementing a system for receiving and investigating complaints and/or grievances of discrimination in accordance with EEO rules;
- (h) Investigating formal and informal complaints of alleged discrimination and contract

noncompliance, and implementing procedures to resolve each case;

- (i) Participating in programs and conferences regarding fair and equal opportunity practices and assisting in servicing the Affirmative Action Plan;
- (j) Establishing and maintaining contact as the ASG and ASPA primary working liaison and representative with the community and all ASG and ASPA contracting groups with regard to equal employment policies and opportunities;
- (k) Requiring that all affirmative action plans submitted by subcontractors or proposed subcontractors are in line with ASG’s and ASPA’s affirmative action requirements for employment for American Samoan and United States nationals.
- (l) Submitting to the director of the Office of Manpower Resources, reports on the progress of ASG and ASPA in achieving established goals and making necessary recommendations for additional efforts in accomplishing goals of the affirmative action program.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3105 EEO Coordinators-Publicity.

ASPA’s EEO policy and Affirmative Action Plan will require an overall understanding of each department head about his or her role in meeting ASPA goals and objectives. The Executive Director shall appoint an EEO coordinator. The EEO coordinator will direct every effort in educating ASPA, contractor, and subcontractor personnel to clarify their understanding and responsibilities for carrying out EEO policy and the affirmative Action Plan.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3106 Contract-Seeker Compliance-Third Parties-Monitoring.

All nonfederal or nonfederally assisted projects, contractors, subcontractors, developers, consultants, appraisers, and other technical specialists will be informed by ASPA that anyone seeking a contract with ASPA must undertake a program. of equal employment opportunity. Any company or individual discriminating in employment practices on the basis

of race, creed, color, religion, sex, or national origin will not be eligible for contracts with ASPA. The EEOCO will monitor these procedures and activities for compliance, and to undertake any necessary corrective measures. The actions and guidelines contained in this policy shall be applicable also to all third parties involved in the project.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3107 Grievances-Appeals.

Grievances and appeals resulting from the implementation of this plan shall be handled in accordance with the procedures outlined in the chapter of these regulations which addresses appeal grievance and administrative review.

History: Rule 1-54, eff 19 Dec 84, (part).

4.3108 Equal Employment Opportunity Affirmative Action Plan.

ASPA’s policy, to provide and promote equal opportunity in employment to people without discrimination because of race, creed, color, sex, religion, national origin, age, handicaps, marital status, political affiliation, or other nonmerit consideration, shall be implemented in accordance with the ASG Equal Employment Opportunity Affirmative Action Plan incorporated in full, by reference, herein.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 32 – DEVELOPMENT & TRAINING

Sections:

- 4.3201 Purpose.
- 4.3202 Management Responsibility-Individual Responsibility.
- 4.3203 Departmental Committees.
- 4.3204 Scope of Activities.
- 4.3205 Records-Reports-Expenditures.

4.3201 Purpose.

ASPA has an obligation to its employees to utilize and develop the talents and abilities of each employee to the maximum extent. It is therefore necessary to establish and operate programs in order to:

- (1) Improve public service;

- (2) Increase efficiency and economy:
- (3) Build and retain a work force of skilled and efficient employees:
- (4) Install and use the best modern practices and techniques in the conduct of government business.

History: Rule 11-84, eff 19 Dec 84, (part).

4.3202 Management Responsibility-Individual Responsibility.

- (a) The Executive Director, ASPA, will develop an annual departmental training program and incorporate it into the department's annual budget. The Executive Director will advise the director, Office of Manpower Resources, of ASPA's annual departmental training program.
- (b) ASPA may request the director, Office of Manpower Resources, to provide technical advice and assistance in the development of the departmental annual employee development and training plans.
- (c) Individual's responsibility; because training and development is an individual matter, one that must be accepted and recognized by the person concerned in order to be of any benefit, each employee is, therefore, responsible both to himself or herself and to ASPA for his or her personal development and growth.

History: Rule 11-84, eff 19 Dec 84, (part).

4.3203 Departmental Committees.

- (a) The ASPA employee development and training committee will consist of appropriate representation within the department and will advise in the development of policies, procedures, and training programs.

History: Rule 11-84, eff 19 Dec 84, (part).

4.3204 Scope of Activities.

ASPA, in establishing an employee development and training plan, will include, but not be limited to the following:

- (a) Induction Training. Induction training consists of two phases:
 - (1) Orientation Training.

Orientation training will be given each new employee upon entry to give him or her an understanding of the department, its policies, objectives, programs, functions, and organizational structure, basic laws affecting departmental operations, and the relationship of his or her job to the overall organization. The standard employee orientation schedule form should be completed at the conclusion of employee orientation.

- (2) Basic Job Training. The immediate supervisor is responsible for providing to a new employee or an employee transferred into another job the basic knowledge of his or her job, including work standards, and to assist him or her in acquiring the skills, techniques, work habits, and attitudes essential for satisfactory work performance.

- (b) Refresher Job Training.

This training is provided to bring employees up to date on information in an occupation in which they had been previously trained and to brush up on skills that have become "rusty" through disuse or improper use.

- (c) New Activities, Procedures, Laws, Policies.

- (1) Whenever new activities or procedures in work methods are instituted, ASPA will provide orientation to the activity or procedure and adequate instructions to employees in performing the new activity before effecting the changeover. Such orientation and instructions will be given to all employees involved, to effect the change with a minimum of work disruptions and to facilitate transition to the new setup from both the standpoint of management and the employees.

- (2) Whenever changes to existing laws or whenever new laws, policies, and rules are made, ASPA will provide the means for informing all management personnel, including supervisors and such other persons as are affected, of these changes.

(d) Management Development Activities (Supervisors).

(1) Basic Supervisory Training. ASPA shall enroll all supervisors in the Office of Manpower Resources basic supervisory training program within 6 months of their appointment. This program will cover the basic skills, knowledge, and attitudes necessary for the efficient performance of their managerial and operational responsibilities.

(2) Advanced Supervisory Training. A supervisory development activity of an advanced and continuing nature shall be established to further assist administrative and supervisory personnel in keeping up with new developments in management, supervisory, and human relations techniques.

(e) Methods Improvements Activity (Work Simplification). This training is provided to assure a systematic plan for developing better operating methods through the cooperative efforts of management and employees in recognizing, stimulating, and using the common sense and imagination of all employees and supervisors to produce valuable ideas for effecting economy and developing better methods for getting work done in the easiest, simplest, and fastest way possible.

(f) Self-development Activities. This training provides employees with the means for self-improvement in developing essential knowledge, skills, and attitudes, and individual potential for career service through voluntary participation in government-sponsored and agency sponsored activities both within and without the government service.

(g) Special Purpose Activities. This training provides for meeting the needs imposed by technological improvements or employment displacement, changes in public services requirements, civil defense matters, legislation, or conditions, usually of a nonrecurring nature. Included in this category are:

(1) Internship training activity, a formalized activity of related academic study and on-the-job instruction designed to develop outstanding individuals to meet the employment needs of ASPA and to upgrade the quality of ASPA service through improved personnel effectiveness;

(2) Training agreements, which provide ASPA with the means for obtaining qualified personnel to carry out the agency’s mission when there are no other available resources through which these qualified personnel could be obtained. They are formal plans whereby ASPA or ASG training is used to supplement the employee’s percent qualifications.

(h) Out-service Training. This provision permits ASPA to send employees to nonagency or nongovernment facilities for needed training which is not available within the government’s jurisdiction and to pay all or any part of the expenses of such training. The training may be full time, part time, on duty or off duty, day or evening, or any necessary combination of these, provided the training is of primary benefit to ASPA service.

History: Rule 11-84 eff 19 Dec 84. (part.)

4.3205 Records-Reports-Expenditures.

(a) Records.

(1) Basic Records. ASPA will establish necessary records for employee development and training.

(2) Letters of Completion. ASPA will prepare for documentation in official personnel jackets, letters of completion for individuals completing satisfactorily any approved employee development and training activity. The letter will include the following information:

(A) Title of course;

(B) Hours of training received;

(C) A brief outline of subject matter covered;

(D) Dates of attendance:

- (E) Where and by whom sponsored if other than ASPA.
- (3) Training Certificate. The Office of Manpower Resources will issue training certificates to employees completing satisfactorily any endorsed employee development and training activity with 20 or more hours of instruction time. ASPA will advise the Office of Manpower Resources of employee development and training activities through submission of employee development and training plans and of any additions or amendments to them.
- (b) Report Requirements. A system of reporting is necessary to give meaningful information which will assist management in assessing the past and in planning the future activities and to funnel in the data from ASPA to the Office of Manpower Resources, which is responsible for preparing a master employee development and training report for the Governor. ASPA will submit a consolidated semiannual report to the Office of Manpower Resources by the tenth working day following the end of each semi-annual period.
- (c) Expenditures.
 - (1) For items in the annual agency employee development and training plan requiring expenditure of funds for which appropriations have been included in the agency's operating budget:
 - (A) In-service Training. An invoice for expenditure of funds will be completed and processed according to the ASPA standard operating procedure.
 - (B) Out-service Training. An invoice for expenditure of funds will be completed and processed according to the ASPA standard operating procedure.
 - (2) For items requiring agency expenditures of funds above and beyond those covered in the operating budget:
 - (a) In-service Training. Training using resources and facilities outside the agency

but within the jurisdiction of the ASG and involving expenses for which funds have not been included in the agency annual training budget will be submitted for prior approval to the Executive Director.

- (b) Out-service Training. Training using resources and facilities outside of the jurisdiction of the ASC Will be submitted for prior approval to the Executive Director.
- (3) ASPA will use as guidelines for training expenditures, Part VI of the American Samoa Government Employee Development and Manual Training.

History: Rule 11-84, eff 19 Dec 84, (part).

TITLE 4 - CHAPTER 33 – TRAVEL

Sections:

- 4.3301 Per diem allowance-Rates set by ASPA.
 - 4.3302 Per diem allowance-Intraterritorial travel-Rate.
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4.3301 Per Diem Allowance-Rates Set By ASPA.

For travel or temporary official business away from a permanent duty station in the territory, Asp's per diem rate shall be the same as that applicable to ASG employees.

History: Rule 11-84, eff 19 Dec 84. (part).

4.3302 Per Diem Allowance-Intraterritorial Travel-Rate.

(a) Effective July 14, 1980, the per diem rate for travel on temporary official business away from a permanent duty station in the territory by an employee of ASPA between the island of Tutuila, the Manu'a group of islands and Swains Island is \$40 per day.

(b) To be entitled to the full per diem, the employee must stay overnight and provide, with his or her travel expense report, a receipt evidencing that he or she stayed in a duly licensed accommodation facility. If such evidence is not presented or if the employee does not stay overnight, the employee is entitled to only 50% of the per diem rate.

(c) Travel authorization must be submitted and approved by the Executive or Deputy Director prior to any ASPA related travel.

History: Rule 11-84. eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 34 – EMPLOYEE SAFETY

Sections:

4.3401 Safety practices.

4.3401 Safety Practices.

All ASPA employees should be familiar with and observe the safety rules of ASPA as set forth in Appendix A which appears at the end of this chapter.

History: Rule 11-84. eff 19 Dec 84. (part).

FOREWARD

The safety rules herein set forth are designed to provide the maximum amount of protection to life and property without unduly hampering the progress of work. They are designed primarily for your protection-the protection of your life and your job. As such they deserve your wholehearted support and observance. It is truly said that the best safety device is a safe man. Let us all try to be safe men and this goes equally for the Division and its supervisors as well as our physical workers. Every representative of the Division should be fully aware of his responsibility in carrying out the Division's share of this safety partnership.

These rules have been developed from our experience and the experience of others. They are intended to cover all of your various occupations but cannot be expected to cover every act committed in your daily work. But your thorough knowledge and every day practice of the rules will prepare you to meet more safely any new hazard that may arise. We expect to add to and to alter the rules from time to time as we find ways to improve.

Superintendents, foremen, sub-foremen, and others permanently or temporarily in charge, are required to maintain a strict observance of all safety rules. If a difference of view arises with regard to the meaning or application of these rules, or as to the means necessary to carry them out, the decision of the supervisory employee in authority on the job shall be

taken and acted upon immediately. Subsequent appeal may be made through established channels.

All employees must be familiar with these rules and observe them. Under no circumstances will ignorance thereof excuse any violation. Employees who violate any rule, or knowingly permit such violations, shall be subjected to discipline or immediate dismissal, as the circumstances may warrant. Employment by the Division constitutes acceptance of the above conditions. Every employee engaged in the construction, maintenance, or operation of the Division's facilities must be furnished with a copy of these Safety Rules, and shall be able at all times to prove his possession of same and his familiarity with the rules applicable to his work.

In addition to these rules, Division employees are subject to and governed by the rules, orders and standards issued by Governmental Authorities. Employees and particularly foremen and superintendents are advised to familiarize themselves herewith.

ELECTRIC UTILITY DIVISION

SAFETY RULES

General Practices

(These rules shall apply to all employees of the Division)

1. Foreman responsible for safety.

The superintendent, foreman, or other person directly in charge of any work will be held strictly responsible for the safety of his men and the public in the immediate vicinity. It shall be his duty to do all those things which can be done to safeguard his men and the public and he shall fully satisfy himself that all reasonable protection against accident has been provided.

2. Foreman responsible for discipline.

The superintendent, foreman, or other person directly in charge of any work will be held strictly responsible for the discipline of his men and for their observance of all safety and other rules.

He shall not allow practical joking, showing off, or horseplay during work hours or while on Division premises or in charge of Division property.

3. Starting work without orders.

Under no conditions shall any employee start work where a hazard exists until told to do so by the superintendent, foreman, or other person directly in charge.

4. Unsafe conditions.

Employees must immediately report to their nearest supervisor any defective or unsafe conditions. Employees must not undertake any work-which they are not qualified to perform safely. Unsafe practices and conditions will not be permitted. Hatchways, even if of a temporary nature, must be protected by guard rails and kick plates.

5. Reporting.

Employees must report all accidents promptly to their immediate superior. In case of injury to the employee, the immediate superior will be responsible for the employee's receiving proper medical attention. First aid kits are available throughout the Division.

6. Intoxicating liquor.

Employees must not use intoxicating liquor while on duty nor report for duty while under its influence.

7. Horseplay.

Practical jokes, scuffling, "horseplay" or the urging of persons to take chances will not be tolerated during working hours.

8. Fire equipment.

Employees shall acquaint themselves with the instructions of the Division covering prevention and suppression of fires and with the location, care, and handling of all firefighting equipment at or near their work area

9. Smoking.

Employees are to observe all "NO SMOKING" signs and must not smoke in the proximity of inflammable material or gases whether working on property occupied by the Division or on the premises of others. Always be sure that cigarette ashes are dead before emptying them into waste containers.

10. Hazardous practices.

Employees must exercise general care to prevent fires. They must:

- a. Never smoke in attics or basements.
- b. Never light a blow torch in an attic.
- c. Never use an open flame for illumination in an attic or basement.
- d. Never use an open flame torch in an oil storage plant.
- c. Always use proper soldering procedure while soldering in an attic or next to inflammable material.
- f. Have proper type of extinguishers available when handling torches.
- g. Remove inflammable material from premises as soon as possible.

11. Paint.

Partially used cans of paint in buildings and shops are to be kept in a metal locker when not in use.

12. Storage bins.

Storage bins shall at all times be kept clean and free from loose cardboard paper and excelsior.

Such material is to be kept in a covered metal bin.

13. Inflammable material.

Rags saturated with highly inflammable material are to be properly disposed of after each operation requiring their use. Buckets or other containers shall be properly marked when containing highly inflammable material.

14. Compressed air.

Compressed air shall be confined to the uses for which it was designed. "Horseplay" with compressed air or the cleaning of hair or clothes with it is prohibited.

15. Molten material.

- a. Extra precautions must be taken while handling molten material of any kind, especially compound and solder. Gloves and safety glasses are to be worn by anyone handling such material.

- b. The man above shall warn persons below before pouring or lowering any molten material or equipment.

16. Solder.

Do not put a cold or wet solder ladle into hot solder. Do not use a leaky soldering torch or blow pot. Use only white gasoline in torches.

17. Ladders amid scaffolds.

- a. All movable ladders and scaffolds are to be provided with effective means to prevent slipping or falling. Ladders are to be tied while in use.
- b. Employees shall never work from the top step of a ladder.
- c. Employees shall never use an unsafe ladder or scaffold.

All ladders and scaffolds are to be inspected periodically by supervisors for safe condition.

When possible, provision shall be made to prevent tools from falling from scaffold platforms.

18. Hand tools.

Employees must not use chisels with mushroomed heads, hammers with cracked or loose handles, or any other tool which is in bad repair or not fitted to the work in progress.

19. Arc welding.

An arc welder shall wear a hood when arc welding. The welding is to be shield where possible.

Helpers should wear protective glasses.

Welders working above others should take protective measures to prevent sparks from falling below.

Fire watch should be maintained below.

20. Walking under heavy loads.

Employees must not ride on or walk under a load of a crane or a finger lift.

21. Signals to crane operator.

Only the designated signalman shall give signals to a crane operator.

22. Buried structures.

Constant vigilance must be exercised in order to avoid damage to buried structures of all kinds. When a hard obstacle is struck, it shall be uncovered immediately to determine the nature of the obstruction and the steps necessary for safe excavation.

23. Excavated soil.

Excavated soil shall be so piled as to prevent backsliding. Special care shall be taken to place rocks or heavy material well away from the excavation.

24. Open trenches.

When needed, traffic bridges are to be placed across trenches so that a normal flow of traffic is permitted. Access to fire hydrants must be provided at all times.

25. Warning signs.

Warning signs, barriers, guards, “Men at Work” signs, and red lights at night are to be installed whenever temporary or permanent hazards exist due to moving machinery, exposed current carrying parts, open excavations, hazardous construction operations, removal of manhole covers, and the like.

26. Housekeeping.

- a. Employees shall exercise general care, orderliness, and “good housekeeping” when performing their work; employ safe methods of handling, transporting, and storing materials, supplies, and tools; and keep all walkways clear.
- b. Floors are to be kept clean and free from oil and grease. Each employee is responsible for “housekeeping” as to the equipment for which he is responsible and the immediate area in which he works.

27. Protruding nails.

- a. Nails shall not be left protruding from lumber, scaffolding or temporary structures.
- b. When uncrating merchandise and equipment, employees are to dispose immediately of loose boards having protruding nails.

SAFETY DEVICES

28. Safety equipment.

Safety devices, such as goggles, gas masks, machine guards, mats, shields, insulated platforms, switch stick and fuse tongs, grounding devices. “Men at Work” signs, rubber gloves and protector safety belts, and all other safety devices or materials as may be needed for the safety of the employees, are standard equipment and just be used as directed by the supervisors.

29. Clothing.

Clothing suited to the job shall be worn at all times. Loose or fagged clothing shall not be worn around rotating machinery. Shoes with thin soles or with holes in the soles shall not be worn.

30. Safety goggles.

a. Goggles must be worn when:

1. Using disc sanders;
2. Using surface grinders;
3. Using emery wheels;
4. Using power buffers;
5. Chipping metal;
6. Chipping concrete;
7. Drilling concrete, brick or plaster;
8. Scraping;
9. Welding or burning or helping welder or burner;
10. Pouring habit;
11. Operating power ripaws;
12. Cleaning with solvents, acids, paint removers;
13. Painting with creosote;
14. Spraying metals;
15. Cleaning with air;
16. Sand blasting;
17. Shoveling or riding load of rubbish;
18. Working in area where dust, Vapor, flying chips, sparks, or hot metal are present.

b. Special care must be taken while removing goggles in order to prevent accumulated foreign matter entering the eyes.

31. Cloves.

Gloves suited to the particular job are to be worn.

32. Respirators.

A suitable respirator is to be used at all times while spray painting or working where injurious dust or vapor is present.

33. Hard hats.

Hard hats shall be worn by the members of all pole line crews while doing their normal work and by all other employees when working in an area where construction or maintenance crews are at work or when employees are working up on a pole or structure.

34. Rubber goods.

Rubber goods or gloves must never be stored among tools or hardware. They are to be put in a special place for rubber goods only.

LIFTING

35. Lifting method.

Employees are to use approved lifting methods at all times and must never attempt to lift more than they are capable of lifting safely.

36. Heavy lifting.

All, weights over 150 pounds which are to be lifted or transported are to be handled under the supervision of the foreman or working foreman.

37. Lifting from trucks.

Due care must be taken by truck drivers in the handling of heavy lifts. The foreman or working foreman is responsible for providing necessary help for loading and unloading.

POWER MACHINES

38. Machine operators.

Only assigned operators will operate power equipment and machinery.

39. Safeguards.

Employees must not remove or make ineffective any safeguard except under the supervision of the man in charge.

40. Grinding wheels.

Grinding wheel workrest shall be kept adjusted within a maximum distance of 1/8" from wheel. Adjustments must not be made while the wheel is in motion. Only one man should use a grinding wheel at any one time.

41. Unattended machines.

Power machine motor switches must be left in the "OFF" position when not attended.

42. Repairs to machines.

The main switch must be tagged and locked open when making repairs on power machinery and equipment. Plugs should be pulled off all portable handpowered tools before adjusting them.

43. Grounding de-energized wires.

- a. Cables and bus work shall be grounded before any work is done or they shall be treated as hot.
- b. In grounding lines, employees must ground one end of ground wire before attaching ground wire to dead line.

44. Rubber blankets.

All adjacent line objects must be covered with approved rubber blankets or other insulating covering when working around and on high voltage wires or equipment.

45. Rubber gloves.

Rubber gloves must be worn whenever directed or where a hazard exists such as working on energized lines, cables, or equipment; stringing lines near energized lines; repairing fallen lines during storms and emergencies; working on lines or wires when the workman is solidly grounded on structure or ground.

46. Switching testing.

All switching, testing and changing of fuses on high voltage side must be performed in accordance with operating rules.

47. High or intermediate voltage spaces.

High or intermediate voltage galleries, vaults, or enclosures must not be entered without authorization by proper authority.

48. Instructions on hazards.

Before working on hot lines or in a substation, the man in charge is to instruct every man verbally as to the nature of the work to be done and the special hazards connected with the job. He is to insist that all of his workmen are to keep clear of equipment until he personally gives clearance to work on this respective equipment.

49. Switches.

All switches must be locked open or blocked and tagged when working in a substation or on high voltage lines. The man in charge shall let all men know of the hazards and install barricades or danger signs around live equipment if necessary.

50. Artificial respiration.

All employees who work with electrical equipment of 120 volts or greater MUST know artificial resuscitation and be able to pass a practical test in its application.

Linemen must know pole top methods as well as methods used while victim is on the ground.

51. Service boxes.

Service boxes must be securely guarded when it is necessary to leave them open. Hot fuses or contacts shall be covered with some form of insulating blanket or sheet strong enough to prevent accidental shock.

52. Disconnect and oil switches.

- a. Before opening or closing disconnect switches in series with circuit breaker, make sure that the circuit breaker in that circuit is open.
- b. When working around oil switches or switch mechanism keep clear of the moving parts.

They may operate without warning.

53. Danger signs.

Equipment which has been rendered inoperative protected for work, and tagged with "Danger" sign

must not be placed in service again or have the “Danger” sign removed unless authorized by the man protected.

54. Fuses.

- a. Employees shall not remove or replace fuses on low voltage service unless safety switch is open where such switch is provided.
- b. When link fuses are installed on open boxes, the workman must make sure that he is clear of all grounded objects.
- c. When placing fuses in hot circuits, the workman must protect his eyes.
- d. Approved equipment must be used when fuses are to be removed or replaced.

55. Potheads.

Potheads of any voltage must not be disconnected under load.

56. Unnecessary conversation.

When it is necessary to do any work on conductors or apparatus that are alive, no unnecessary conversation shall take place.

57. De-energized circuit check.
Employees shall always use approved equipment to check de-energized circuits before cutting into the cable.

58. Energized single and multiple conductor cable splices.

Single conductor cables may be cut or spliced if in each instance specific directions are given by the supervisor or foreman. The normal practice will be to de-energize all multiple conductor cables of any voltage before making splices. Multiple conductor splices will be made “hot” only when authorized by a supervisor.

59. Hot-line work.

- a. 4 KV and below: Any man doing hot-line work must personally see that all adjacent lines are covered with rubber before starting to work.
- b. 6 KV and above: Approved hot-line tools must be used while working on these lines. Lines of lower voltage must be properly protected by

approved equipment when they are located in the working area.

60. Soldering electrical wires (inside wiring).

Before electrical wires are soldered, a test must be made with an approved tester to make sure the wire is dead.

61. Electrical repairs.

Unauthorized employees must not attempt to repair faulty electrical equipment. They shall report the condition to the man in charge.

62. Electrical circuits in working areas.

All employees are to know the location and the circuits controlled by all of the main switches in their immediate working area so that power may be immediately cut off in case of an electrical fire or if some person has become “frozen” to a live circuit and cannot let go.

63. Hand lines.

Employees must use only the hand lines when working between or over hot lines.

64. High voltage equipment work.

Work shall not be performed on any high voltage cable, switch, or device when energized except upon authorization of the supervisor and under the direction of the foreman.

65. Working alone.

Unless authorized, no workman shall work alone in any switchroom, transformer house, regulator room, manhole, or around open switches.

Standby Workmen. Only qualified employees or employees under continuous supervision or instruction of a qualified workman shall be assigned to work on lines or equipment energized in excess of 750 volts, and except in trouble work or emergencies involving hazards of life or property no such employee shall be assigned to work alone. During the time an employee is doing work on any energized parts of the line, the other employee shall act only as an observer, for the purpose of preventing an accident.

OVERHEAD LINE WORK

66. Street lighting.

Street lighting circuits shall always be treated as if they were alive. Street lighting circuits shall always be treated as if they were of maximum voltage existing on the poles.

67. Pole climbing.

- a. Before climbing a pole the employee is to check safety belt, snaps, climbers and climber straps and make rubber glove test.
- b. The position of high voltage wires, the direction of the freed, and the climbing clearance are to be checked before climbing a pole.
- c. Employees are to check for poor conditions such as rotten poles, faulty insulation, and insufficient clearance before starting any work on a pole. Report any of the conditions immediately to the man in charge.

68. Pole work.

- a. Before climbing through and above primary lines, the employee must be sure that all primary lines are covered with rubber. While working on hot lines, the employee must be sure that the ground wire is protected.
- b. Unless absolutely necessary, only one lineman shall go up or down a pole at the same time.
- c. Small materials and tools are not to be thrown up or dropped. They shall be raised or lowered in a canvas bucket.

68a. Work from aerial basket.

- a. Only qualified, trained persons shall be permitted to operate this equipment.
- b. A body belt and safety strip or its equivalent shall be used while working from aerial basket.
- c. The maximum hot line voltage to be worked with rubber gloves, from an insulated aerial basket is 7.5 Kv Phase to ground when using Class 1115,000 volts rubber gloves. Protective equipment (line-hose, hoods, blankets, etc.) shall be used within the work area.
- d. The aerial basket shall not be brought into direct contact with energized conductors or equipment.

- e. Ground personnel shall not contact (touch) vehicle when basket is in proximity to energized lines.

69. De-energized power lines.

- a. All dead lines on poles among hot lines are to be considered hot at all times.
- b. Before work is started on de-energized (dead) high tension lines, the employees must receive proper clearance and test the line to be sure that it is dead before grounding.

70. Changing over cable.

When making cable changeovers, especially after guy wires, etc., have been removed, the employee must see that a questionable pole is braced in some way to prevent its falling.

71. Safety to public:

- a. Barricades must be placed so that all traffic will be compelled to pass safely, especially when molten solder, hot compound, paint, liquid materials, tools, or heavy objects are used during work on poles. "Men at Work" signs must be placed 200 feet away on each approach to the place where the work is being done. This is required by city and county ordinance.
- b. If possible, barricades are to be placed to route traffic to the windward side of the poles.

UNDERGROUND WORK

72. Ventilation of confined spaces.

All manholes, vaults, or continued spaces are to be ventilated with approved equipment before being entered, Precautions are to be taken to ascertain the presence of sewer or illuminating gas.

If gas is present, notify the supervisor or foreman immediately.

73. Manholes.

- a. Manhole covers must never be opened with the bare fingers. Use the hooks provided for the purpose or, in an emergency, some other safe means.

- b. Open manholes are to be continuously guarded against foot or vehicular traffic.
- c. One man shall remain on the surface at an open manhole unless traffic is securely blocked by the splicer’s cart and tent frame or heavy barricade. Light pipe barricades alone will not be considered sufficient protection.
- d. Workmen leaving a location temporarily are to replace covers on all holes subjected to traffic hazards, even for periods of a minute or so, or when out of sight of the manhole, or away from its immediate vicinity.
- e. Equipment using gasoline as fuel, such as lanterns, engines, must not be used at any time in unventilated manholes or other poorly ventilated places. Such equipment shall be placed at a safe distance from the hole, preferably on the leeward side.
- f. Solder pots, wiping metal pots, and compound kettles are to be lowered into manholes on approved equipment attached to hand lines:
- g. Rubbish is to be cleaned out of manholes or vaults periodically as the work progresses. A thorough cleanup must always be made at the end of each day’s work.
- h. Material must never be lowered into man-holes without warning those below.

VEHICLES

74. Driving Division vehicles.

Division vehicles must be driven with due regard for the safety of pedestrians, of the driver himself, of other drivers, and of both Division and other property. An employee must not operate a Division vehicle which he believes unsafe until it has been checked by garage. Drivers must familiarize themselves with all local regulations and laws regarding the operation of motor vehicles and have city and county and Division driver’s licenses. The observance of these laws and regulations is the individual responsibility of each driver. Operators are to be courteous at all times. Accidents are to be reported to the Division’s garage immediately.

74a. Riding in Division vehicles.

Riders should be seated at all times while vehicle is in motion and should not attempt to leave the vehicle while it is in motion.

FIRST AID SUGGESTIONS

75. First aid kits.

- a. The Division provides first aid kits for temporary assistance in case of burns, scratches, wounds and other injuries. All employees should familiarize themselves with the contents of these kits so that they can render assistance in all cases. The services of a doctor should be secured, however, unless the accident is of the very slightest nature.
- b. Each kit contains a tube of vaseline for dressing small burns and scalds, liquid soap for cleansing cuts and wounds, aromatic spirits of ammonia inhalants to be used in cases of fainting, electric shock or any other case where a stimulant is required or advisable, and sterile dressings and bandages.

76. Common injuries and their first aid treatment.

Careful judgment has to be consistently utilized with field conditions as to whether or not an ambulance should be called or a man transported to the doctor or hospital in a Division vehicle.

a. Electrical or Heat Burns.

(1) Symptoms

1st degree	2nd degree	3rd degree
Pain	Pain	Pain
Shock	Shock	Shock
Redness	Blisters	Charring

(2) First Aid Care

- (a) Care for SHOCK
- (b) Prevent infection and relieve pain by using vaseline on minor burns only. For all severe or extensive burns a dry dressing is satisfactory.

(3) Cautions

- (a) Do not break blisters
- (b) Do not remove clothing or other material stuck to the burned area.

b. Chemical Burns.

Flush a chemical burn with a large amount of water to remove the chemical completely, and then treat it as any other burn.

c. Cuts, Wounds, etc.

(1) Types Dangers

Abrasions

Incised

Lacerated

Punctured

(2) First Aid Care

(a) Wounds with severe bleeding: Control serious bleeding (refer to section 76 d).

(b) Wounds in which bleeding is not severe:

Cleanse with liquid soap and water: apply sterile dressing and bandages; refer to DOCTOR.

d. Hemorrhage or Severe Bleeding.

(1) Direct pressure on wound. If the bleeding is not controlled, use digital pressure.

(2) Care for SHOCK

(3) Call a DOCTOR or ambulance

(4) Types of bleeding:

(a) Internal

Symptoms: restlessness, anxiety, thirst

Source: stomach-vomited up (coffee ground appearance) Lungs-coughed up (bright red and frothy) bowels-usually dark tarry stool

First Aid Care: Keep victim QUIET in a lying down position;

Keep victim WARM; give NO STIMULANTS, and Call a DOCTOR.

(b) External

First Aid Care: Control bleeding by direct pressure on wound; then if bleeding is not controlled, use digital pressure.

Care for SHOCK.

Call a DOCTOR and/or ambulance.

e. First Aid for Shock.

Keep patient lying down, preferably with his head lower than the rest of his body. Call a DOCTOR and/or ambulance.

f. Dislocations and Fractures.

(1) Do not attempt to put a joint or a fracture back into place.

(2) Hold the injured limb in the most comfortable position, using splints and bandages.

g. Eye Injuries.

(1) When the presence of a foreign body is suspected in the eye, the safest procedure is to put on an emergency eye patch and have an eye DOCTOR attend to it as soon as possible.

(2) It is not advisable to have a fellow worker remove the foreign body from the eye.

h. Back and Neck Injuries.

(1) Symptoms. If the patient is conscious, he may tell you what part of his body hurts and what happened to him. Pain in the neck or back may be the only symptoms. Always ask him whether he can move his feet and toes, hands and fingers.

Never lift an injured person without first asking whether he can move his feet or hands. If he cannot open and close his fingers readily or grasp your hands firmly, his neck is probably broken. If he can move his fingers but not his feet or toes, his back is probably broken. In either case, the spinal cord may be injured but may not be severed.

The History of the accident may help the first aider to decide what may be wrong.

Don't lift the patient's head even enough to give him a drink of water. Don't let him try to rise or sit up because the injury to the spinal cord may be made worse and permanent paralysis may result.

If the patient is unconscious and you suspect spinal injury, handle him as though his neck were broken. Shock is usually severe. Steps must be taken to prevent shock and further injury to the spinal cord.

- (2) First Aid Treatment. If the patient with a broken neck must be moved, get a door or a wide board and place it beside the patient with the end at least four inches beyond the top of his head. The board should be at least 15 inches wide and 5 feet or more long.

If the patient is on his back, one person should kneel above his head and hold the head between both hands, steadying it so that the head, neck, and shoulders move as a unit with the body not bending. One or more persons may then grasp the patient's clothing at the shoulders and hips and carefully slide him sideways onto the board or door so that he stays face upwards, arms at sides, and his head, trunk, and extremities on the board.

The head must not be raised or the neck bent forward or sideways, but should be well padded at the sides to keep the face upward.

The arms should be folded over the chest and held firmly together by means of safety pins or bandages. Several straps or bandages should be placed around the patient and the board to hold him in place during transportation.

Don't put a pillow under his head, but sweaters, clothing, or improvised small sandbags can be put against the sides of his head to keep it from rolling from side to side during transportation. His face should be up. The board with the injured person on it may then be lifted onto a blanket or stretcher and carried by two or more bearers.

REMEMBER: Any injured person with acute pain in the back should be considered as having a fractured spine until it is proved untrue.

REMEMBER: The head must not be tilted forward, backward, or sideward under any Circumstances

77. Resuscitation (Electric Shock).

GENERAL INSTRUCTIONS

(See procedures for mouth-to-mouth, arm-lift, back-pressure method, prone pressure method, and pole-top-double rock method of resuscitation at end of section)

These instructions must be followed even if the victim appears to be dead.

- a. Have someone phone the nearest doctor and the nearest ambulance.
- b. Free the victim from the circuit immediately. Use a dry stick, dry rope, dry coat or other nonconductor. The use of your own hands without protection is dangerous and may add another victim to the accident.
- c. Instantly attend to the victim's breathing.
- d. As soon as possible, feel with your fingers in the victim's mouth and throat and remove any foreign body (tobacco, false teeth, etc.). If the mouth is shut tightly, pay no more attention to it until later.
- e. Do not stop to loosen the victim's clothing, but **START RESUSCITATION IMMEDIATELY**. Every moment of delay is serious.
- f. As soon as this artificial respiration has been started and while it is being continued, an assistant should loosen any tight clothing about the victim's neck, chest or waist.
- g. A brief return of natural respiration is not a certain indication for stopping the resuscitation. Not infrequently the victim, after a temporary recovery or respiration, Stops breathing again. The victim must be watched and if natural breathing stops, artificial resuscitation should be resumed at once.
- i. In carrying out resuscitation it may be necessary to change the operator. This change must be made without losing the rhythm of respiration.

- j. Resuscitation should be carried on at the nearest possible point to where the victim received his injury.
- k. Should it be necessary, due to extreme weather conditions, etc., to remove the victim before he is breathing normally, resuscitation should be continued during the time he is being carried.
- 1. Ask permission from the medical man in charge to continue resuscitation in ambulance. Send one or more division representatives in ambulance with the victim.
- m. To avoid strain on the heart when the victim revives, keep him lying down and do not allow him to stand or sit up.

MOUTH TO-MOUTH (MOUTH-TO-NOSE) METHOD OF ARTIFICIAL RESPIRATION

If there is foreign matter visible in the mouth, wipe it out quickly with your fingers or a cloth wrapped around your fingers.

- 1. Tilt, the head back so the chin is pointing upward. Pull or push the jaw into a jutting-out position.

These maneuvers should relieve obstruction of the airway by moving the base of the tongue away from the back of the throat.

- 2. Open your mouth wide and place it tightly over the victim's mouth. At the same time pinch the victim's nostrils shut or close the nostrils with your cheek. Or close the victim's mouth and place your mouth over the nose. mow into the victim's mouth or nose. (Air may be blown through the victim's teeth, even though they may be clenched.) The first blowing efforts should determine whether or not obstruction exists.
- 3. Remove your mouth, turn your head to the side, and listen for the return nish of air that indicates air exchange. Repeat the blowing effort.

For an adult, blow vigorously at the rate of about 12 breaths per minute. For a child, take relatively shallow breaths appropriate for the child's size, at the rate of about 20 per minute.

- 4. If you are not getting air exchange, recheck the head and jaw position. If you still do not get air

exchange, quickly turn the victim on his side and administer several sharp blows between the shoulder blades in the hope of dislodging foreign matter.

Again sweep your fingers through the victim's mouth to remove foreign matter.

Those who do not wish to come in contact with the person may hold a cloth over the victim's mouth or nose and breathe through it. The cloth does not greatly affect the exchange of air.

ARTIFICIAL RESPIRATION

ARM-LIFT, BACK-PRESSURE METHOD.

LAY VICTIM IN PRONE POSITION, elbows bent, one hand on the other. Head on hands, face to one side. Kneel at victim's head on either or both knees.

PLACE HANDS: Fingers spread, thumbs touching, heels of hands just below a line between armpits.

APPLY PRESSURE: Rock forward slowly until arms are vertical. Keep elbows straight.

RELEASE PRESSURE: Rock back slowly. Grasp victim's arms just above elbows. Continue backward.

LIFT ARMS: Raise arms until tension is felt for maximum chest expansion. Lower arms to complete cycle.

REPEAT CYCLE 12 TIMES PER MINUTE.

POLE-TOP Resuscitation-DOUBLE ROCK METHOD.

Double-rock method of push-pull pole-top resuscitation.

- 1. Place hands for expiratory phase
- 2. Rock back during expiration
- 3. Raise hands for arm-lift phase during inspiration
- 4. Rock back during arm lift. (See instructions below)

INSTRUCTIONS

Clear victim from contact, keeping yourself from making contact through victim or line.

Start resuscitation-place victim astride your safety belt as for the standard pole-top method.

1. Put your arms around his waist and place both hands on his abdomen.
2. Compress abdomen with an upward motion while rocking backward with your shoulders and upper body. Release pressure and rock forward to the resting position.
3. Move your hands up over the victim’s chest, bringing your arms upward and backward.
4. Lift victim’s upper arms to a horizontal position. While doing this, rock backward a second time.

Release and rock forward to the resting position.

Repeat cycle 10 to 12 times per minute.

Lower victim to ground as soon as possible when help arrives. Do not keep him in a sitting position on the pole for more than 15 minutes.

If possible, don’t stop resuscitation while victim is being lowered.

Continue resuscitation on ground.

DON’T GIVE UP RESUSCITATION WHILE AWAITING ARRIVAL OF DOCTOR.

SCHAFFER METHOD

Use Schaffer method when arm-lift, back-pressure method cannot be applied due to serious arm injury.

Lay victim on his stomach with one arm extended, the other bent at the elbow so that his face, turned outward, rests on his hand or forearm. Kneel, straddling the victim’s thighs.

1. Place the palms of your hands on the small of his back, with little fingers just touching the lowest ribs.
2. With arms extended swing forward gradually, bringing weight of your body to bear upon victim. Take about two (2) seconds for this operation.
3. Immediately swing back to remove the pressure. After two (2) seconds) swing forward again. Repeat the entire procedure 12 to 15 times a

minute. DON’T GIVE UP. Continue resuscitation while awaiting arrival of doctor.

History: Rule 11-84, eff 19 Dec 84. (part).

TITLE 4 - CHAPTER 35 – PERSONNEL MANAGEMENT INFORMATION SYSTEM

Sections:

4.3501 Provision of Data.

4.3501 Provision of Data.

ASPA will provide personnel action data to the Office of Manpower Resources for entry into the ASG Automated Personnel Management Information System in accordance with:

- (a) The Personal Procedures Manual (Automated Personnel Management Information System) prepared by the Department of Manpower Resources, January, 1975, and revised May, 1977.
- (b) The portion of the ASG Procedures Manual, dated December 1, 1982, entitled “POSITIONS: New, Changes and Abolishment of.”

History: Rule 11-84, eff 19 Dec 84. (part).

Ethics Policy and Regulations of the American Samoa Power Authority

This Ethics Policy and Regulations of the American Samoa Power Authority, hereinafter referred to as “ASPA Ethics Policy”, shall apply to all employees, directors, officers and agents of ASPA. This policy includes full-time, part-time and contract employees, hereinafter referred to as “ASPA Employees”. The ASPA Ethics Policy establishes the responsibilities of all ASPA Employees, directors, officers and agents to exhibit ethical behavior and creates an ASPA Ethics Board to review requests for opinions and complaints.

A. Authority of ASPA Ethics Board

The ASPA Ethics Board may receive two different types of requests: (1) those for advice before an ASPA employee, director, officer or agent acts or engages in an activity that might present a conflict or may violate the ASPA Ethics Policy, and (2) complaints regarding current or past action(s) of an ASPA employee, director, officer or agent.

The ASPA Ethics Board also has authority to create subcommittees to investigate, hear and rule upon complaint, allegations, or information concerning violations of or potential violations of the ASPA Ethics Policy.

B. Requests for Ethics Determination Before an Action Occurs

An ASPA employee, director, officer or agent may request advice regarding potential ethics or conflicts of interest and may receive a ruling stating the appropriate course of action. Most requests for advice may be answerable over the telephone by the Manager of Human Resources (MHR). Any individual requesting such an opinion can, however, request that the opinion be provided in writing. Whether provided verbally or in written form, the MHR shall keep a log of all inquiries, issues presented and opinions provided. Those requests presenting complex facts or requiring considerable research, however, may require a written request stating the facts and an opinion from the ASPA Ethics Board. Further, any individual who is not satisfied with the opinion provided by the MHR is entitled to request that the issue be submitted to the Ethics Board. The MHR shall seek the advice of ASPA's advisory opinion, edited to avoid disclosing the identities of the persons involve, shall be made available for public inspection by the MHR.

C. Complaints of an Impending Action or Action that has Occurred

Any ASPA employee, director, officer or agent or the public may request that a Potential ethics issue be investigated. A complaint may be made anonymously by mailing the complaint to ASPA's Legal Counsel or by submission to the Executive Director, MHR, ASPA's Legal Counsel, or Chairman of the Board. Any other form of complaint may be submitted orally or in writing to the Executive Director, MHR, ASPA's Legal Counsel, or Chairman of the Board. All complaints received shall be forwarded to the Executive Director and the MHR.

Upon receiving any complaint for a violation of the ASPA Ethics Policy, the Executive Director and MHR shall notify the Chairman of the ASPA Ethics Board and ASPA Legal Counsel. The Executive Director and MHR shall investigate the facts and

prepare recommendations for the ASPA Ethics Board. The facts and recommendations shall be reviewed by ASPA Legal Counsel.

Because ethics problems may be resolved by ASPA Management, the Chairman of the ASPA Ethics Board may elect to accept Management's recommendations and suggested corrective actions or to have the cases reviewed by the ASPA Ethics Board. For cases that are referred to the ASPA Ethics Board, the Executive Director and MHR shall prepare a complete finding of facts and recommendations, subject to review by ASPA's Legal Counsel. The person whose actions are in question shall be given the opportunity to present his or her side of the issue to the ASPA Ethics Board.

All individuals involved in receiving, reviewing, recommending, and hearing any violation of the ASPA Ethics Policy are required to keep confidential all information obtained in an investigation. The only information that shall not remain confidential is that information contained in a rendered decision. Any potential criminal activity shall be immediately referred to Territorial or Federal officials or both.

Upon the receipt of any complaint or allegation of a violation of the ASPA Ethics Policy, the parties charged with investigation and recommendation of action shall forward their complete finding of facts and recommendation to the ASPA Ethics Board within thirty (30) days of the receipt of the complaint or allegation. If the investigating party requires more time, then a written request for more time shall be made to the ASPA Ethics Board. The ASPA Ethics Board shall have absolute discretion to grant or deny any extension of time.

The ASPA Ethics Board shall make a written determination of its decision to accept or deny ASPA Management's finding of fact, recommendations and suggested corrective actions no later than fourteen (14) days from the date the finding of facts and recommendations were due. If the ASPA Ethics Board determines that it should review the matter, then the ASPA Ethics Board shall set a hearing date. The hearing date should be as soon as practical and in no event shall be more than thirty (30) days after the Ethics Board's determination to review the matter.

Any individuals and/or companies involved in the matter shall be given at least ten (10) days notice prior to the hearing date.

If an ASPA employee, director, officer or agent is found to have violated the ASPA Ethics Policy, then any action against that employee shall be pursued as required by law depending upon the individual's classification as Career Service, Contract employee, at-will employee or otherwise.

D. Duties and Responsibilities of Staff to the ASPA Ethics Board

The MHR shall serve as the Staff Director to the ASPA Ethics Board and shall have the responsibility, duty, and power to investigate, hold meetings with employees, present the case at the ASPA Ethics Board hearings, and make recommendations on requests from ASPA employees or members of the public. The MHR shall diligently and responsibly pursue review of any ethics issue complaint and shall make note and report to the ASPA Board of Directors, through the ASPA's Legal Counsel, of any and all internal and external lobbying activities regarding an investigation. The MHR shall maintain a complete and comprehensive record of any and all discussions regarding an ethics investigation and shall avoid any potential conflicts of interest.

The Legal Counsel for ASPA shall be informed of all activities and shall have the power and duty to participate in any and all investigative activities on behalf of the ASPA Board of Directors.

XIII. EMPLOYEE NOTICE

The Executive Director and the MHR shall require that all current ASPA employees, directors, officers and agents be given copies of the policy in both English and Samoan, and all ASPA employees, directors, officers and agents shall acknowledge receipt of and understanding of the ASPA Ethics Policy.

Every new ASPA employee, director, officer and agent shall be given copies of the policy in both English and Samoan, and shall acknowledge receipt and understanding of the ASPA Ethics Policy.

The MHR shall conduct an annual workshop for all ASPA employees, directors, officers and agents to

review the ASPA Ethics Policy. All ASPA employees, directors, officers and agents shall acknowledge their participation in the annual workshop. The MHR shall post the ASPA Ethics Policy in appropriate places.

History: Rule 02-04, eff. May 12, 2005.

APPENDIX A

END OF TITLE 4 – GOVERNMENT
EMPLOYEES

TITLE 5 – PUBLIC PLANNING BUDGET AND DEVELOPMENT

Chapters:

- 01 Budget Manual-Program Planning and Budget Development
- 02 Territorial Planning Commission Rules

TITLE 5 - CHAPTER 01 – BUDGET MANUAL-PROGRAM PLANNING & BUDGET DEVELOPMENT

Sections:

- I. BUDGET CYCLE*
 - 5.0101 Budget cycle-Designated.
- II. BUDGET TERMINOLOGY*
 - 5.0102 Preface.
 - 5.0103 Terminology.
- III. THE BUDGET*
 - 5.0104 Budget defined.
 - 5.0105 Budget as a tool.
 - 5.0106 Budget policy.
- IV. BUDGET DEVELOPMENT PROCESS*
 - 5.0107 Basic principles.
 - 5.0108 Policy planning and future outlook.
 - 5.0109 Call for preliminary budgets.
- V. BUDGET FORMS AND INSTRUCTIONS*
 - 5.0110 Summary 2-Departmental highlights statement.
 - 5.0111 Summary –3-Resource summary.
 - 5.0112 Detail-1-Program budget summary.
 - 5.0113 Detail-2-Personnel costs.
 - 5.0114 Detail-3-Travel expense.
 - 5.0115 Detail-4-Contractual services.
 - 5.0116 Detail-5-Materials and supplies.
 - 5.0117 Detail-6-Equipment.
 - 5.0118 Detail-7-A11 other costs.
 - 5.0119 Detail-8-Motor vehicle schedule.
 - 5.0120 CIP-1-Capital improvement projects.
 - 5.0121 Enterprise and special revenue funds.
- VI. GUIDELINES, CRITERIA AND INSTRUCTIONS FOR EVALUATION OF GENERAL FUND NONTAX-REVENUES*
 - 5.0122 Guidelines and criteria.

- 5.0123 Instructions.
- VII. BUDGET REVIEW*
- 5.0124 First local budget review.
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 - 5.0126 Call for final budget estimates.
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- VIII. THE BUDGET EXECUTION PHASE.*
- 5.0128 Budget resolution.
 - 5.0129 Appropriations act.
 - 5.0130 Continuing resolution.
 - 5.0131 Notification of authorization.
 - 5.0132 Quarterly apportionments.
 - 5.0133 Budget transfers.
 - 5.0134 Budget reprogramming-Generally.
 - 5.0135 Reprogramming rules for local funds.
 - 5.0136 Reprogramming rules for DOI funds.
 - 5.0137 Request.
 - 5.0138 Other budget rules.

- IX. PERFORMANCE EVALUATION*
- 5.0139 Quarterly performance reports.
 - 5.0140 Reviews.

I. BUDGET CYCLE

5.0101 Budget cycle-Designated.

The American Samoa Government budget cycle is as set forth in the following illustration:

II. BUDGET TERMINOLOGY

5.0102 Preface.

Only the most frequently used terms in the American Samoa Government budgetary process are included in this section of the Manual. Their definitions are either copied verbatim or adapted from the third edition of A Glossary of Terms Used in The Federal Budget Process, March 1981, prepared by the United States General Accounting Office, Washington, D.C. The Manual users are encouraged to consult the above publication for applicable budget terminology excluded from the listing in 5.0103.

History: Rule 3-83, eff 4 Apr 83. § C.1.

5.0103 Terminology.

- (1) “Activity” means a specific and distinguishable line of work performed by one or more

organizational components of a governmental unit for the purpose of discharging a function or subfunction for which the governmental unit is responsible. For example, food inspection is an activity performed in the discharge of the health function.

- (2) “Advances” means amounts of money prepared pursuant to budget authority or emergency conditions in contemplation of the later receipt of goods, services, or other assets. Advances are ordinarily made only to payees to whom an agency has an obligation, and not in excess of the amount of the obligation. A common example is travel advances which are amounts made available to employees prior to the beginning of a trip for costs incurred in accordance with the ASG travel policy.
- (3) Agency. There is no single definition of the term “agency.” Any given definition usually relates to specific legislation. Generally, “execution agency” means any executive branch department, independent commission, board, bureau, office or other establishment of the American Samoa Government, including independent regulatory commissions and boards. Agency, in the broader sense, encompasses executive agencies and establishments in the judicial and legislative branches.
- (4) “Agency missions” means responsibilities assigned to a specific agency for meeting territorial needs.

Agency missions are expressed in terms of the purpose to be served by the programs authorized to carry out functions or subfunctions which, by law, are the responsibility of that agency and its component organizations. In contrast to territorial needs, generally described in the context of major functions, agency missions are generally described in the context of subfunctions.

- (5) “Allotment” means an authorization by the head (or other authorized employee) of an agency to his/her subordinates to incur obligations within a specified amount.
- (6) “Antideficiency act” means legislation enacted by the Legislature to prevent the incurring of

obligations or the making of expenditures (outlays) in excess of amounts available in appropriations or funds; to fix responsibility within an agency for the creation of any obligation or the making of any expenditure in excess of an apportionment or reapportionment; and to assist in bringing about the most effective and economical use of appropriations and funds.

- (7) “Apportionment” means a distribution made by the office of program planning and budget development of amounts available for obligation, including budgetary reserves established pursuant to law, in an appropriation or fund account. Apportionments divide amounts available for obligation by specific time periods (usually quarters), activities, projects, objects or a combination thereof. The amounts to be apportioned limit the amount of obligations that may be incurred. In apportioning any account, some funds may be reserved to provide for contingencies or to effect savings, pursuant to the antideficiency act.

The apportionment process is intended to prevent obligation of amounts available within an appropriations or fund account in a manner that would require deficiency or supplemental appropriations and to achieve the most effective and economical use of amounts made available for obligation.

- (8) “Appropriation act” means a statute, under the jurisdiction of the House and Senate Committees on Appropriations, that generally provides authorization for agencies to incur obligations and to make payments out of the treasury for specified purposes. An appropriation act, the most common means of providing budget authority, generally follows enactment of authorizing legislation unless the authorizing legislation itself provides the budget authority. From time to time, supplemental appropriation acts are enacted to serve territorial needs.
- (9) “Public enterprise fund” means expenditure accounts authorized by the Legislature or by Executive Authority to be credited with collections, primarily from the public, that are generated by, and earmarked to finance, a continuing cycle of business-type operations.

- (10) “Intragovernmental revolving fund” is authorized by law or Executive Authority to carry out a cycle of intragovernmental business-type operations. They are similar to public enterprise revolving fund accounts except they are credited with offsetting collections primarily from other agencies and accounts. Some examples are working capital fund, stock fund, industrial fund, and supply fund.
- (11) “Appropriation limitation” means a statutory restriction in appropriation acts that establishes the maximum or minimum amount that may be obligated or expended for specified purposes.
- (12) “Balanced budget” means a budget in which receipts are equal to or greater than outlays (see also Budget Deficits and Budget Surplus).
- (13) “Balances of Budget Authority. Balances of budget authority result from the fact that not all budget authority enacted in a fiscal year is obligated and paid out in that same year. Balances are classified as follows:
- (A) Obligated Balance. The amount of obligations already incurred for which payment has not yet been made. This balance can be carried forward indefinitely (unless restricted by policy) until the obligations are paid.
 - (B) Unobligated Balance. The portion of budget authority that has not yet been obligated. In 1-year accounts the unobligated balance expires (ceases to be available for obligation) at the end of the fiscal year. In multiple-year accounts the unobligated balance may be carried forward and remain available for obligation for the period specified. In no-year accounts the unobligated balance is carried forward indefinitely until (I) specifically rescinded by law, or (II) until the purposes for which it was provided have been accomplished, or (III), in any event, whenever disbursements have not been made against the appropriation for 2 full consecutive years.
- (14) “Budget activity” means categories within most accounts that identify the purpose, projects, or types of activities financed.
- (15) “Budget amendment” means a revision to some aspect of a previous budget request, submitted to the Legislature by the Governor before the Legislature completes appropriation action.
- (16) “Budget authority” means authority provided by law to enter into obligations that will result in immediate or future outlays involving Government funds, except that budget authority does not include authority to insure or guarantee the repayment of indebtedness incurred by another person or government. The basic forms of budget authority are appropriations, authority to borrow, and contract authority. Budget authority may be classified by the period of availability (1-year, multiple-year, no-year, by the timing of legislative actions (current or permanent), or by the manner of determining the amount available (definite or indefinite).
- (A) Forms of budget authority are as follows:
 - (I) Appropriations. An authorization by an act of the Legislature that permits agencies to incur obligations and to make payment out of the treasury for specified purposes. An appropriation usually follows enactment of authorizing legislation. An appropriation act is the most common means of providing budget authority. Appropriations do not represent cash actually set aside in the treasury for purposes specified in the appropriation act; they represent limitations of amounts that agencies may obligate during the period of time specified in the respective appropriation acts.
 - (II) Authority to Borrow. Also called borrowing authority or authority to spend debt receipts. Statutory authority that permits an agency to incur obligations and to make payments for specified purposes out of borrowed moneys.
 - (III) Contract Authority. Statutory authority that permits obligations to be incurred in advance of appropriations or in anticipation of receipts to be credited to a revolving fund or other account.

By definition, contract authority is unfunded and must subsequently be funded by an appropriation to liquidate obligations incurred under the contract authority, or by the collection and use of receipts.

(B) Periods of availability are as follows:

(I) One-year (Annual) Authority. Budget authority that is available for obligation only during a specified fiscal year and expires at the end of that time.

(II) Multiple-year authority. Budget authority that is available for a specified period of time in excess of one fiscal year. This authority generally takes the form of 2-year, 3-year, etc., availability, but may cover periods that do not coincide with the start or end of a fiscal year. For example, the authority may be available from 1 Jul of one year through 30 Sep of the following fiscal year (15 months). This type of multiple-year authority is sometimes referred to as “forward funding” (for distinction, see Full Funding; Multi-Year Budget Planning).

(III) No-year Authority. Budget authority that remains available for obligation for an indefinite period of time, usually until the objectives for which the authority was made available are attained.

(C) Extensions of budget authority are as follows;

(I) Reappropriations. Legislative action to continue the obligational availability, whether for the same or different purposes, of all or part of the unobligated portion of budget authority that has expired or would otherwise expire. Reappropriations are counted as budget authority in the year for which the availability is extended.

(II) Continuing Resolution. Legislation enacted by the Legislature of Congress to provide budget authority for agencies and/or specific activities to continue in operation until the regular appropriations are enacted. Continuing resolutions are enacted when action on appropriations is not completed by the beginning of a fiscal year. The continuing resolution usually specifies a maximum rate of which the obligations may be incurred, based on the rate of the prior year, the executive budget request, or an appropriation bill passed by either or both houses of the legislative body.

(17) “Budget deficit” means the amount by which the Government’s budget outlays exceed its budget receipts for a given fiscal year (see also Balanced Budget; Budget Surplus).

(18) “Budget estimates” means estimates of budget authority, outlays, receipts, or other budget measures that cover the current and budget years.

(19) “Budget surplus” means the amount by which the Government’s budget receipts exceed its budget outlays for a given budget! Fiscal year (see also Balanced Budget, Budget Deficit).

(20) “Concurrent resolution on the budget” means a resolution passed by both Houses of Congress, but not requiring the signature of the President, setting forth, reaffirming, or revising the congressional budget for the United States Government for a fiscal year.

Two such resolutions are required before the start of a fiscal year. The first, due by 15 May, establishes the congressional budget targets for the next fiscal year; the second, scheduled to be passed by 15 Sep, sets a ceiling on authority and outlays and a floor on receipts. Additional concurrent resolutions revising the previously established budget levels may be passed by Congress at any time (see also Congressional Budget; First Concurrent Resolution on the Budget; Second Concurrent Resolution on the Budget).

(21) “Congressional budget” means the budget as set forth by Congress in a concurrent resolution of the budget. By law the resolution includes:

- (A) The appropriate level of total budget outlays and of total new budget authority;
- (B) An estimate of budget outlays and new budget authority for each major functional category, for undistributed intergovernmental transactions and for such other matters relating to the budget as may be appropriate to carry out the purposes of the 1974 Congressional Budget and Impoundment Control Act;
- (C) The amount, if any, of the surplus or deficit in the budget;
- (D) The recommended level of federal receipts; and
- (E) The appropriate level of the public debt (see also Concurrent Resolution on the Budget; President’s Budget).

(22) “Cost-based budgeting” means budgeting in terms of costs to be incurred, that is, the resources to be consumed in carrying out a program, regardless of when the funds to acquire the resources were obligated or paid and without regard to the source of funds (i.e., appropriation). For example, inventory items become costs when they are withdrawn from inventory, and the cost of building is distributed over time, through periodic depreciation charges, rather than in a lump sum when the buildings are acquired.

Cost-based budgeting, in lieu of reflecting the obligational requirements for programs, reflects costs expected to be incurred during the budget year.

(23) “Deficiency appropriation” means an appropriation made to an expired account to excess of available funds.

Deficiency appropriations are rare since obligating in excess of available funds generally is prohibited by law. Deficiency appropriation is sometimes erroneously used as a synonym for supplemental appropriation (see also Anti-

deficiency Act; Apportionment; Deficiency Apportionment; Supplemental Appropriation).

(24) “Deficit financing” means a situation in which the federal government’s excess of outlays over receipts for a given period is financed primarily by borrowing from the public.

(25) “Deobligation” means a downward adjustment of previously recorded obligations. This may be attributable to the cancellation of a project or contract, price revisions, or corrections of estimates previously recorded as obligations.

(26) “Fiscal policy” means ASG policies with respect to taxes, spending and debt management, intended to promote the territories macroeconomic goals, particularly with respect to employment, gross domestic product, price level stability, and equilibrium in balance of payments. The budget process is a major vehicle for determining and implementing ASG fiscal policy. The other major component of macroeconomic policy is monetary policy which is determined at the federal level.

(27) “Fiscal year” means any yearly accounting period, without regard to its relationship to a calendar year. The fiscal year for the ASG begins on 1 Oct and ends on 30 Sep. The fiscal year is designated by the calendar year in which it ends; for example, fiscal year 1 980 is the year beginning 1 Oct 79 and ending 30 Sep 80 (prior to fiscal year 1977, the ASG fiscal year began on 1 Jul and ended on 30 Sep).

(A) Budget Year. The fiscal year for which the budget is being considered; the fiscal year following the current year.

(B) Current Year. The fiscal year in progress.

(C) Prior Year. The fiscal year immediately preceding the current year.

(28) “Full funding”, means the providing of budgetary resources to cover the total cost of a program or project at the time it is undertaken. Full funding differs from incremental funding, where budget authority is provided or recorded for only a portion of total estimated obligations expected to be incurred during a single fiscal year. Full funding is generally discussed in terms

of multiyear programs, whether or not obligations for the entire program are made in the first year.

- (29) “Grants” means assistance awards in which substantial involvement is not anticipated between the federal government and the state or local government or other recipient during the performance of the contemplated activity. Such assistance is not limited to a state or local government as in the case of grantsinaid.

The two major forms of federal grants are block and categorical. Block grants are given primarily to general purpose governmental units in accordance with a statutory formula. Such grants can be used for a variety of activities within a broad functional area. Examples for federal block-grant programs are Omnibus Crime Control and Safe Streets Act of 1968, Comprehensive Employment and Training Act of 1973, Housing and Community Development Act of 1974, and the 1974 Amendments to the Social Security Act of 1935 (Title XX).

Categorical grants can be used only for a specific program and are usually limited to narrowly defined activities. Categorical grants consist of formula, project, and formula project grants.

Formula grants allocate federal funds to states or their subdivisions in accordance with a distribution formula prescribed by law or administrative regulation.

Project grants provide federal funding for fixed or known periods for specific projects or the delivery of specific services or products (see also Grant-In-Aid).

- (30) Grants-in-Aid. For purposes of the budget, grants-in-aid consist of budget outlays by the federal government to support state or local programs of government service to the public. Grants-in-aid do not include purchases from state or local governments or assistance awards to other classes of recipients (e.g., outlays for research or support of federal prisoners). (See also Grants, Revenue Sharing).
- (31) “Incremental funding” means the provision (or recording) of budgetary resources for a program or project based on obligations estimated to be

incurred within a fiscal year when such budgetary resources will cover only a portion of the obligations to be incurred in completing the program or project as programmed. This differs from full funding, where budgetary resources are provided or recorded for the total estimated obligations for a program or project in the initial year of funding (for. distinction, see Full Funding).

- (32) “Multiyear budget planning” means a budget planning process designed to make sure that the long-range consequences of budget decisions are identified and reflected in the budget totals. Currently, multiyear budget planning in the executive branch encompasses a policy review for a 3-year period beginning with the budget year, plus projections for the subsequent 2 years. This process provides a structure for the review and analysis of long-term program and tax policy choices (see also Full Funding; Projections).
- (33) “Object classification” means a uniform classification identifying the transactions of the Government by the nature of the goods or services purchased (such as personnel compensation, supplies and materials, and equipment), without regard to the agency involved or the purposes of the programs for which they are used.
- (34) “Obligational authority” means the sum of (A) budget authority provided for a given fiscal year, (B) balances of amounts brought forward from prior years that remain available for obligation, and (C) amounts authorized to be credited to a specific fund or account during that year, including transfers between funds or accounts.
- (35) “Obligations-based budgeting” means financial transactions involving the use of funds are recorded in the accounts primarily when obligations are incurred, regardless of when the resources acquired are to be consumed. (For distinction, see Cost-Based Budgeting.)
- (36) “Obligations incurred” means amounts of orders placed, contracts awarded, services received, and similar transactions during a given period that will require payments during the same or a future period. Such amounts will include outlays for which obligations had not been previously

recorded and will reflect adjustments for differences between obligations previously recorded and actual outlays to liquidate those obligations.

- (37) Outlays. Obligations are generally liquidated when checks are issued or cash disbursed. Such payments are called outlays. In lieu of issuing checks, obligations may also be liquidated (and outlays occur) by the maturing of interest coupons in the case of some bonds, or by the issuance of bonds or notes (or increases in the redemption value of bonds outstanding).

Outlays during a fiscal year may be for payment of obligations incurred in prior years (prior-year outlays) or in the same year. Outlays, therefore, flow in part from unexpended balances of prior-year budget authority and in part from budget authority provided for the year in which the money is spent.

The terms expenditure and net disbursement are frequently used interchangeably with the term outlays.

- (38) “Oversight committee” means the legislative committee charged with general oversight of the operation of an agency or program. In most cases, but not all, the oversight committee for an agency is also the authorizing committee for that agency’s programs (see also Authorizing Committee).
- (39) “Personnel compensation” comprises gross compensation (before deduction for taxes and other purposes) for services of individuals, including terminal leave payments. This classification covers all payments (salaries, wages, fees) for personal services rendered to the Government by its officers or employees, either civil or military, and compensation for special services rendered consultants or others.
- (40) “Personnel benefits” comprises cash allowances paid to civilian and military employees incident to their employment and payment to other funds for the benefit of employees. Prerequisites provided in kind, such as uniforms or quarters, and payments to veterans and former employees resulting from their employment are excluded.

- (41) “Planned fiscal year” the fiscal year immediately preceding the budget year.

- (42) “Program” is generally defined as an organized set of activities directed toward a common purpose, or goal, undertaken or proposed by an agency in order to carry out its responsibilities. In practice, however, the term program has many uses and thus does not have a well-defined, standard meaning in the legislative process. Program is used to describe an agency’s mission, programs, functions, activities, services, projects, and processes.

- (43) “Program evaluation,” in general, is the process of assessing program alternatives, including research and results, and the options for meeting program objectives and future expectations. Specifically, program evaluation is the process of appraising the manner and extent to which programs:

- (A) Achieve their stated objectives;
- (B) Meet the performance perceptions and expectations of responsible public officials and other interested groups;
- (C) Produce other significant effects of either a desirable or undesirable character.

- (44) “Projections” means estimates of budget authority, outlays, receipts or other budget amounts that extend several years into the future. Projections generally are intended to indicate the budgetary implications of continuing or proposed programs and legislation for an indefinite period of time. These include alternative program and policy strategies and ranges of possible budget amounts. Projections usually are not firm estimates of what will occur in future years, nor are they intended to be recommendations for future budget decisions.

- (45) “Reprogramming” means utilization of funds in an appropriation account for purposes other than those contemplated at the time of appropriation.

- (46) “Rescission” means the consequence of enacted legislation that cancels budget authority previously provided by the Legislature before the time when the authority would otherwise lapse; i.e., cease to be available for obligation.

- (47) “Revenue sharing” means federal funds distributed by formula to states and general-purpose local governments with few or no limits on the purposes for which the funds may be used and few restrictions on the procedures which must be followed in spending the funds (see also Grants-in-Aid).
- (48) “Subfunction” means subdivisions of a budget function. For example, health care services and health research are subfunctions of the function health.
- (49) “Subsidy” means, generally, a payment or benefit made by the ASG for which there is no current charge. Subsidies are designed to support the conduct of an economic enterprise or activity, such as utility operations. They may also refer to provisions in the tax laws that provide certain tax expenditures and to the provisions of loans, goods, and services to the public at prices lower than market value, such as interest subsidies.
- (50) “Substantive law” means statutory public law other than appropriation law; sometimes referred to as basic law. Substantive law usually authorizes, in broad general terms, the executive branch to carry out a program of work. Annual determination as to the amount of the work to be done is usually thereafter embodied in appropriation law.
- (51) “Supplemental appropriation” means an act appropriating funds in addition to those in an annual appropriation act. Supplemental appropriations provide additional budget authority beyond the original estimates for programs or activities (including new programs authorized after the date of the original appropriation act) in cases where the need for funds is too urgent to be postponed until enactment of the next regular appropriation bill. Supplementals may sometime include items not appropriated in the regular bills for lack of timely authorizations (see also Antideficiency Act; Apportionment; Appropriation Act; Deficiency Apportionment: Deficiency Appropriation).

History: Rule 3-83, eff 4 Apr 83, § C.2.

III. THE BUDGET

5.0104 Budget defined.

Basically, the budget is a plan which specifies what, how, when, who and how much it takes to achieve pre-determined objectives. Broadly speaking, however, the budget serves many other important purposes which are often functionally diffused and frequently misunderstood because of its subtle influence on the decision making process. Some of these purposes are explained in the following section.

History: Rule 3.83, eff 4 Apr 83, § D.1.

5.0105 Budget as a tool.

- (a) As a planning tool, the budget serves the following functions:
- (1) To allocate the production and delivery of goods and services between the public and the private sector;
 - (2) To distribute the limited resources productively and equitably among competing agency and public demands;
 - (3) To stabilize local fiscal policies aimed at stimulating employment opportunities, industrial production, equitable interest rates and a balanced approach towards economic, social and political growth.
- (b) As a managerial tool, public managers use the budget document to merge various sectoral plans to form an agency plan of action for the ensuing fiscal year, to control the operating strategies within the approved agency plan, to evaluate agency performance and to monitor agency compliance with the appropriation act as well as other ASG policies and regulations applicable to the budgetary process.

History: Rule 3-83, eff 4 Apr 83, § D.2.

5.0106 Budget policy.

- (a) It shall be the policy of the American Samoa Government to use the “all inclusive concept” in its budgetary process. This concept, described simply, calls for the inclusion of estimated outstanding obligations and supplies and materials inventory on hand at the end of the current fiscal year plus new appropriated funds to determine total resources available to an agency for its planned programs. For example, if Agency “A” estimate its planned programs for

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the budget year will cost \$500,000 and its projected outstanding obligations and supplies inventories are \$100,000 and \$50,000 respectively, the contract between the old budget concept and the new all-inclusive concept should look something like this:

Agency A Variance	Old Budget Concept	New All- Inclusive Concept
Estimated Outstanding Obligations (\$100,000)	-0-	\$100,000
Estimated supplies in inventory ((50,000))	-0-	50,000
Request for appropriated funds <u>150,000</u>	500,000	350,000
Total Planned Programs -0-	500,000	500,000

- (b) The difference between the two concepts is the impact on appropriated funds. Under the old concept, Agency “A” will receive \$500,000 for its planned programs from appropriated funds plus \$150,000 from outstanding obligations and supplies inventories over and above its planned requirements. Under the new concept only 350,000 will be needed from appropriated funds to complete the resource requirements for Agency “A”’s planned programs.
- (c) The key to the success of this new concept is the reasonable accuracy of the estimates for outstanding obligations and supplies inventories and the provision of some flexibility in the budget to make up for the errors in the estimates. The agency and the department of administrative services are responsible for accurate estimates of the items mentioned while budget flexibility will be the responsibility of the OPPBD.

History: Rule 3-83. eff 4 Apr 83, § D.3.

IV. BUDGET DEVELOPMENT PROCESS

5.0107 Basic principles.

- (a) The basic principles which guide the budget developmental process for the ASG are contained in the Executive Budget Act. Supplementing these principles are federal rules and policies which control the application, receipt, execution and evaluation of federal funds and their uses.
- (b) For all practical purposes, these guiding principles are subject to change as a result of amendments to existing laws, introduction of new laws, different philosophies and managerial perspectives of a new administration or other operating constraints beyond the control of the ASG.
- (c) This budget manual attempts to develop a framework which not only builds capacity within those individuals involved in the budget process but also flexible enough to accommodate both short and long term changes. For example, the ASG through the evolutionary process retained the basic budget format from which important information can be extracted and laid out differently to accommodate the Governor’s and the local legislative reviews, the Department of the Interior requirements and the annual congressional budget submission. Moreover, the enforcement of the Executive Budget Act is done in phases to insure understanding of the basic concepts contained in each phase before the next one begins, to insure selection of only the most useful information desired by the managers for evaluation purposes and to make sure that the cost of information gathering processing and evaluating does not outweigh the benefits to be gained.

History: Rule 3-83. eff 4 Apr 83, § E 1.

5.0108 Policy planning and future outlook.

- (a) The first step in the budget development is the determination by the Governor (based on assessment of past achievements, current problems and future plans) of the territorial priorities to be addressed during the budget year, identification of the most critical issues to be

resolved, specification of his operating strategies, a preliminary estimate of resource requirements for the budget year and their projected impact over the next four years, an assessment of the territorial and world economic outlook and impact on estimated resources and an inventory of legislative proposals required to implement the proposed programs. The Governor's determination is normally made in conceptual terms which are later summarized and translated into specific targets for use by the agencies in the preparation of their preliminary budget proposals.

- (b) By December first of each year, the director of development planning office will provide the Governor with charts and graphs depicting employment trends, industrial production, inflation rate, interest rates and sales trends with appropriate narratives explaining the assumptions supporting his perceptions of the territory's future economic outlook. The projections should cover the period of five years (budget year plus four years in the future). The original and two copies should be sent to the Governor with carbon copies to the director of planning and budget.
- (c) Between the first of October and the last day of November each year, ASG agencies are requested by the office of program planning and budget (OPPBD) explaining the present status of their programs, what they intend to accomplish in the current fiscal year, the nature of the improvements they foresee during the budget year and general ideas as to what is envisioned as the agency's mission for the planned fiscal year and how this relates to the overall objectives for the ASG. The GDPM's are due at the OPPBD on the last day of November each year. OPPBD will summarize all of the agencies' GDPM's, develop three options and present them to the Governor on the third week of December for his consideration. This information, together with OPPBD's estimate of resource requirements and legislative changes desired plus the director of development planning office's economic outlook will form the basis for the Governor's determination of policy planning and future outlook for the territory.

History: Rule 3-83, eff 4 Apr 83, § E.2.

5.0109 Call for preliminary budgets.

- (a) Based on the Governor's determination of policy direction, the OPPBD issues a call for the preparation of preliminary budgets for the planned fiscal year specifying the future policy direction, budget forms required for each departmental activity and the department, the due date and other special instructions to assist the agencies in the preparation of their budgets.
- (b) For each department or office, the following budget forms are required:
 - (1) Summary-2 Departmental highlight statement;
 - (2) Summary-3 Resource summary.
- (c) For each departmental activity, the following budget forms are required:
 - (1) Detail-1 Program budget summary;
 - (2) Detail-2 Personnel costs;
 - (3) Detail-3 Travel expense;
 - (4) Detail-4 Contractual services;
 - (5) Detail-5 Materials and supplies;
 - (6) Detail-6 Equipment;
 - (7) Detail-7 All other costs;
 - (8) Detail-8 Motor vehicle schedule,
- (d) In addition to the above forms, each department or office should submit in 8 1/2 X 14" paper its latest approved organizational chart as part of its budget submission.
- (e) The completion of the above requirements constitutes the official budget submission of an agency. Letters transmitting the budget, copies of cost/benefit analyses and studies, etc. are optional unless requested by the OPPBD.
- (f) The budget office requires the original and copy of all forms at the specified date in the approved budget calendar for the given fiscal year.

History: Rule 3-83, eff 4 Apr 83, § E.3.

V. **BUDGET FORMS AND INSTRUCTIONS**

5.0110 Summary-2-Departmental highlight statement. (See Figure 1 for sample)

Department Request. A summary statement stating the departmental mission, outcomes expected and total funding request.

Governor’s Recommendations. (For budget use only).

Functional Statement. State briefly the functional responsibilities of the department. The most recent information on the ASG reorganization may be used for this purpose or modified to fit the department’s needs. Reference to laws, executive orders, policy memorandums or other documents creating the department of office is required.

Long-term Goal and Impact on Territorial Goals. State the department’s long-term goal and identify specifically (in quantifiable terms if necessary) the contribution by the department towards the attainment of territorial goals contained in the economic development plan or other relevant plans.

Budget Year Objectives. State clearly and concisely the departmental objectives you intend to accomplish in the fiscal year.

Projected Accomplishments for this Activity. If measures of outcomes or effectiveness (such as reduced accident rates, higher test scores, etc.) are not available, substitute workload measures. Do not use dollar figures unless you are measuring average cost of production per unit or other performance measures requiring dollars.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0111 Summary-3-Resource summary. (See Figure 2 for sample format)

This form contains resource requirements, budget History, funding for budget year, object class summary and staffing requests for each unit. The information to complete this form comes from Detail-1 and Detail-2 forms. Detail-1 provides the object class summary and budget History while Detail-2 provides the staffing requests for each activity.

To complete this form, start with the grant accounts first and subtotal it. Next, list all the special programs

and enterprise funds under the agency’s jurisdiction and subtotal it. Finally, list all the activities funded by appropriated funds and subtotal it. Compute grand totals from the three subtotals and record them on the line for the budget year.

Identification. Fill in department name, unit title, account number for unit, date document was finalized and person’s name who prepares Summary-3.

Funding Source. Mark the appropriate box to identify the funding source based on the subtotals shown on the form.

Approved Budget. The totals for this line are compiled by adding the object class totals on all the Detail-1 forms within the agency.

Actual Expenditures. Same instructions as the “approved budget” line.

History: Rule 3-83, eff 4 Apr 83, § P.4 (part).

5.0112 Detail-1-Program budget summary. (See Figure 3 for sample format)

Identification. Fill in department name, activity, account number, date prepared and preparer’s name who will provide testimony during the review process.

Funding Source. Put an “X” in the appropriate box to identify the funding source for the activity.

Objective. State briefly and in quantifiable terms what the activity intends to accomplish during the budget year.

Output Measures. Identify measures of output and quantify each measure.

Budget Requirements. Post object class totals from forms Detail-2 to Detail-7. For quarterly apportionments, either divide each object class into four equal installments or according to your agency’s annual work plan.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0113 Detail-2-Personnel costs. (See Figure 4 for sample format)

This form analyzes your needs for personnel. Start your listing with contract employees and subtotal this category. Next, list your local employees and subtotal

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this group. The sum of the two subtotals should equal your total salaries.

Explanation of requirements under column is shown below:

Position No. Refers to number shown on computerized personnel reports.

Employee Name. The name of the person currently occupying the position. This schedule will remain in the budget office and is intended for internal use only. A different format, excluding the employee's name will be used for public documents.

Position Title. The title shown on the computerized personnel reports. If there are any changes in titles between the reports and the budget documents, there should be a reconciliation and explanation of the differences.

Grade/Step. The salary grade and step shown on the latest computerized reports. If the position is vacant, show the budgeted grade and step.

Current Salary. Show the employee's current salary including any increment entitlements during the current fiscal year.

Step Increments. Show the next step to which the employee is entitled during the budget year. If the employee has reached the top of his grade, show zero unless the position has been reclassified and approved.

Other Change. Show increase or decrease in salaries due to promotions, reclassifications, demotions, position terminations, interagency transfers, downgrades and tenure awards.

Proposed Funding. Show the current employee's current salary plus his step increment including any extraneous adjustments to his position. Care should be taken to record only that portion of the increment that is due within the budget year. This would mean close scrutiny of the anniversary dates, promotions, etc.

Explanation of Other Change. Refers to position deletions, additions, promotions, tenure awards, demotions, reclassifications, transfers, etc.

Overtime. Based on actual cost in prior fiscal year, analyze the circumstances that created the overtime,

provide an estimate of the absolute minimum required and offer alternative solution to overtime.

Fringe Benefits. This item is computed against total salaries for career service and contract employees. Overtime should be charged the career service rate.

Career Service

Contract Employees

FICA Taxes—Employer's share

ASG retirement

Workmen's Compensation (Composite rate)

Terminal leave

(a) No consideration is given to the maximum ceiling taxable under FICA taxes since it is estimated that less than 1% of the ASG total work force will exceed the maximum subject to FICA which is \$29,700 per annum.

Total Personnel Costs. Sum of total salaries, overtime and fringe benefits.

Rounded Totals (to nearest \$500). Total personnel costs should be rounded to the nearest \$500 and recorded on this line. These should be the totals that are transferred to Detail-1.

Staffing. Show the total number of positions for local and contract employees. This block should tie in all the positions listed on Detail-2 forms.

History: Rule 3-83, eff 4 Apr 83. § E.4 (part).

5.0114 Detail-3 -Travel expense. (See Figure 5 for sample format)

This form details the information required to justify the request for travel expenses. Request for travel funds must be justified and each request must stand on its own merits. There is no automatic travel allowance budget, that is, if your department was given \$10,000 for travel last fiscal year, it does not mean that your department will automatically be entitled to \$10,000 plus any increments this fiscal year.

Format. The new format is similar to the old form with the exception of the addition of "household effects to travel costs." In the past, this item was budgeted under "all other costs" expense category.

For the latest ASG policy on the shipment of household effects for contract personnel and per diem rates, please check with the director of administrative services to assist you in your projections.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0115 **Detail-4-Contractual services. (See Figure 6 for sample format)**

This form provides justification for the budget request for contractual services.

Consultant. Justification for the project should include the need for the project, targets for consultation, benefits to be derived from the project and alternative solutions considered.

Cost estimates should be broken down between airfare, per diem, fees and other expenses.

Maintenance. For duplicating machines, typewriters and other office machines a current fee schedule should be obtained from the contracting office to guide you with your projections. For specialized equipment or other facilities maintenance, use actual data from previous years to base your calculations. In justification, it is suggested that the total number of machines by make be shown and their average life since acquisition stated. In this connection, it would be prudent to review the recently compiled ASG fixed assets inventory to ascertain what you actually have and budget accordingly. (Note: If there are any discrepancies between the inventory and your physical count, please contact the property management division for any adjustments and not the budget office).

Employee Training. These estimates should include only the benefits provided by contract to those employees who are off-island on training except salaries. Salaries should continue to be shown under Detail-2.

Others (Specify). This category may include contracts for promotional activities and sub-contracts for operating programs which the department lets to the private sector for handling. In any event, justification requirements are similar to those specified under “consultants.”

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0116 **Detail-5-Materials and supplies. (See Figure 7 for sample format)**

This form provides detail justification for the budget request for materials and supplies. In projecting your needs you should analyze actual usage and cost for this expense category in the previous fiscal year, compare it with the approved budget and deduct inventory on hand at the end of the fiscal year to arrive at your actual needs. On the basis of this information and your projected service levels for the proposed fiscal year, estimate your funding requirements and add 8% for inflation.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0117 **Detail-6-Equipment. (See Figure 8 for sample format)**

This form provides detailed justification for the budget request for equipment. Estimates for these and other equipment should be based on current GSA prices (which may be obtained from the office of material management) plus an inflation factor of 8%. If the request is for the replacement of an old piece of equipment, the item being replaced must be described to include the year and make, present condition, and a cost benefit analysis between retaining, renting a new one from a private firm, and buying a new piece of equipment. If the request is for a new piece of equipment, state specifically the need for it, describe what is being done now without it and the effectiveness of the present method, and the net effect if the request was not approved.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0118 **Detail-7-All other costs. (See Figure 9 for sample format)**

This form provides detailed justification for the budget request for all other costs not specifically enumerated in other forms or categories. Most of the costs under this category should be estimated on the basis of actual usage in past fiscal years, plus an 8% inflation factor.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0119 **Detail-8-Motor vehicle schedule. (See Figure 10 for sample format)**

This form lists all the vehicles each agency currently owns by type, year, make, license number, year in which it was purchased, cost, mileage driven, to whom assigned and identification between those

purchased by federal grants and local and Department of Interior funds. The data produced determines the size of the ASG fleet, justifies the need for new vehicles and ascertains a practical replacement program that is efficient and economical.

History: Rule 3-53, eff 4 Apr 83, § E.4 (part).

5.0120 CIP-I-Capital Improvement Projects.
(See Figure 11 for sample format)

These forms provide detail information to justify the need for a CIP request. Each CIP project will be considered separately and no request will be considered unless adequate preplanning has taken place and only funds to cover work scheduled for completion during the proposed fiscal year have been identified. In addition, departments requesting the CIP must identify how the new CIP will be maintained in the future and where the funds should come from to maintain the completed facility.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0121 Enterprise and special revenue funds.

Figure 12 and Figure 13 illustrate the format for enterprise and special revenue funds fashioned after a profit and loss statement format for business type operations. The proforma statements are projected on the accrual basis of accounting and allows for the matching of revenues against expenses for the planned fiscal year.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

VI. GUIDELINES, CRITERIA AND INSTRUCTIONS FOR EVALUATION OF GENERAL FUND NONTAX REVENUES

5.0122 Guidelines and criteria.

- (a) Periodically, it becomes necessary to survey and evaluate the existing fee structure of nontax revenues accruing to the ASG’s general fund. We do not know when was the last time this was done. Nonetheless, the office of program planning and budget is conducting a study in order to compile a catalog of general fund nontax revenues and to examine each fee from the point of appropriateness and adequacy.
- (b) There are no clear-cut criteria that can serve to determine whether an activity should be

appropriately financed from specially levied fees or from general tax revenues. If it is determined that the individual benefiting from the service (rather than the general taxpayer) should pay for the service, the question of how much to charge the individual (whether the fee is equitable and produces adequate revenues) remains to be answered and again must depend on a value judgment.

- (c) The following are some generally stated guidelines and criteria which can be used in evaluating the appropriateness as well as the adequacy of fees:
 - (1) Where governmental services are provided to private individuals and the receipt of such services accrues to the economic advantage of the individual, fees should at least cover the cost providing such services.
 - (2) Where government provides services that are similar to or competitive with those provided by private industry, fees should equal those charged by private industry.
 - (3) Where government provides services that are intended primarily for the protection and promotion of private industry, fees should at least cover the cost of providing such services.
 - (4) Revenues from fees may exceed the cost of providing the service if the level of the fees is imposed to maintain comparability with fees levied for other similar services, or if the level of the fees is reasonably commensurate with the value of the services rendered or if the level of fees is deemed to be reasonable and nonconfiscatory.
 - (5) Revenues from fees need not provide the full cost of the service, if the potential long-term gain to the public justifies such action.
 - (6) As much as possible, fees for similar services should be at uniform levels.
 - (7) Fees imposed on services that are required primarily for the protection of the public should give sufficient consideration to the fact that it is the presence of these activities that creates the need for such protection.

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History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

5.0123 Instructions.

- (a) Complete and attach this evaluation to the revenue estimate form.
- (b) A separate form must be completed for each revenue source.
- (c) Detailed explanation of items:
 - (1) Item I-Services Provided. Briefly describe the kinds of services for which fees are being charged by the program.
 - (2) Item II-Clients Served. List the classes of persons or organizations that directly benefit from the services provided. The general public may be benefited by regulatory and enforcement activities, but the beneficiaries to be reported in these instances are the licensees of those whose premises or processes are being inspected.
 - (3) Item III-Year and Authority to Establish Fee. All user charges should have a beginning point. If the fee was established by memorandum, state the date of the most recent memo, initiator's name, nature of authority and attach copy of memo. If fee was created by law, cite the title and section number of the American Samoa Code.
 - (4) Item IV-Adequacy of Current Fees. Report dollars realized from the services provided and the total of all costs. It may be necessary to prorate the costs if the same resource is used to provide more than one type of service, i.e., if the same program/organizational unit receives revenues from more than one nontax revenue source.
 - (5) Item V-Recommended Fee Structure. List each different type of rate being charged, including a description, the current rate, the recommended rate, and whether legislation, administrative action or other action is required to achieve the changes.
 - (6) Item VI-Comments on Recommended Fee. Include the reasons for recommending or not recommending changes to the fee

structure. If changes are recommended, include the proposed course of action and timetable for achieving the changes.

- (7) Item VII-Net Effect of Recommended Fees. As in Item IV report all dollars realized from the services provided but this time on the basis of the revised fee structure.
- (d) This form may also be used to recommend the establishment of fees for those services which are currently being provided without charge. In this case, Item IV need not be completed.
- (e) If no change to the fee structure is being recommended, complete Items I, II, III, IV, V (reporting "no change") and VI (with reasons for not recommending any change).

Omit Item VII.

See Figure 14 and 15 for completed sample formats for general fund nontax revenues and local tax revenue estimates.

History: Rule 3-83, eff 4 Apr 83, § E.4 (part).

VII. BUDGET REVIEW

5.0124 First local budget review.

- (a) Preliminary budget proposals for the budget year are normally due on the first week of February. During the remainder of February, the OPPBD analyzes agency budgets, directs inquiries to the agencies for more information, informs the agencies of its tentative decisions based on the initial review, receives reactions from the agencies and conducts budget negotiations with the agency directors where disagreements exist.
- (b) Where the agency director finds it necessary to appeal his case, he has the first week of March to discuss his agency's budget request with the Governor. His appeal is focused primarily on the areas of disagreement between the OPPBD and his agency. After his appeal, the Governor's decision becomes final and binding on both the agency director and the OPPBD. The Governor's decision is to be communicated in writing to the parties involved.
- (c) During the remainder of March, the OPPBD devotes the rest of the time to make final changes

and technical adjustments to the agency requests, prepares final revenue projections, makes appropriate summaries for the Governor's review of the final tradeoffs to be made and prepares the budget document for printing and the budget resolution for the Fono's consideration.

- (d) The Fono reviews the budget resolution during the first half of April and accepts it in principle or revises it piecemeal or rejects it in its entirety. During the Fono review, directors are called to testify before the appropriate committees concerning their budget requests. The remainder of April is devoted to translating the approved budget resolution together with comments from the Governor and the Fono into the Department of Interior budget format. American Samoa's preliminary budget proposal is due at DOI on the middle of May.

History: Rule 3-83, eff 4 Apr 83, § E.5.

5.0125 Federal budget review.

- (a) The federal budget review process depends on the whims of each administration. For example, some administrations prefer open communication and appeal for both departmental and OMB passback while others prefer total secrecy until ASG is told to make the necessary revisions to the ASG budget for the Presidential submission to the U.S. Congress. Under the policy of open communication, the office of territorial and international affairs (OTIA) would inform the ASG about the Department of the Interior (DOI) passback. In consultation with the Fono leaders and chairmen of the appropriations committees of both houses, the Governor advises the OTIA of the areas adjusted and those which ASG would strongly appeal even to the extent of asking the appropriate congressional committees to include them as add-ons in their deliberations. Final decisions by OTIA are made by mid-June. The DOT budget is then forwarded to OMB in mid-September. Between mid-September and mid-December the consultation and concurrence process continues among OMB, DOI, OTIA and the ASG. Final allowance for ASG is advised in mid-December with appropriate revisions to the DOI budget due in Washington D.C. before the

first of January for inclusion in the President's budget.

- (b) The next step is for OPPBD to prepare for the congressional budget hearings which are normally scheduled between March and June of the following year. This involves the preparation of budget briefings for the Governor and those attending the hearings in anticipation of committee questions. The briefing summarizes the texts from past hearings, departmental accomplishments and future plans, financial status of the ASG, current status of CIP and federally funded special programs, status of economic, social and political developments, the identification of the most critical problems facing the territory and reporting on long range plans for the ASG.
- (c) At the conclusion of the budget hearings, OPPBD staff remain in Washington D.C. to edit the hearing transcripts, provide answers to additional committee questions, follow through with OTIA and congressional staff on additional data requirements and perform liaison services between the ASG, various congressional offices, DOI and OMB on budget matters.
- (d) Based on past experience, results of final congressional actions are communicated between late September and the first half of December.

History: Rule 3-83, eff 4 Apr 83, § E.6.

5.0126 Call for final budget estimates.

- (a) At the beginning of June, the OPPBD issues a call for final budget estimates for the budget year. Essentially, the call requests the agencies to review their preliminary estimates approved earlier under the budget resolution and submit any revisions due to significant changes that may have occurred since the budget resolution was approved. The changes and financial impact must be clearly identified and the alternatives considered by the agency to take care of the changes must be explained before requesting additional resources.
- (b) Agencies which opted for their preliminary estimates are not required to submit any additional documentation. The OPPBD will

prepare the preliminary estimates in final form and submit a copy for review by the agency.

- (c) The forms used in the preliminary budgets will also be used for the final budget estimates. Blank forms are available at the OPPBD at no cost to the agency.

History: Rule 3-83, eff 4 Apr 83, § E.7.

5.0127 Second local budget review.

The local review procedures for the final budget estimates are the same as those used for the preliminary budget estimates. The differences are the quality of estimates and the end product. During the final budget estimating process, objectives become better refined and related cost estimates more accurate over time and experience gained from the fiscal year in progress. The end product for the preliminary budget estimates is a budget resolution while the final budget estimates result in an appropriation act.

History: Rule 3-83, eff 4 Apr 83, § E.8.

VIII. THE BUDGET EXECUTION PHASE

5.0128 Budget resolution.

After its review of the preliminary budget, the Fono passes a resolution supporting the preliminary budget proposal and noting any changes desired prior to the preparation of the budget submitted in early May to DOI. The resolution does not appropriate revenues; it demonstrates that the Fono has reviewed the budget proposal and concurs in principle with the programs and funding proposed.

History: Rule 3-83, eff 4 Apr 83, § F.1.

5.0129 Appropriations act.

This bill when passed by the Fono and approved by the Governor constitutes the authority to expend funds in the amounts and for the purposes stated in the budget request. The Fono may make additions or deletions to the Governor's budget proposal. The amount approved at departmental level will be reflected in the "Act" and details will generally be provided in the appropriations committee report and detailed justification.

History: Rule 3-83, eff 4 Apr 83, § F.2.

5.0130 Continuing resolution.

The continuing resolution authorizes the continuation of federally funded agencies at current service levels based on some specified percentage of the current fiscal year's budget or the President's request for the budget year. Because of the uncertainty in federal funds, the ASG normally follows the operating guidelines under the continuing resolution for all agencies regardless of funding source to allow for future contingencies while congressional action is in progress.

History: Rule 3-83, eff 4 Apr 83, § F.3.

5.0131 Notification of authorization.

The director of planning and budget will prepare a notification of authorization after the Governor has signed the appropriations act. The notification will normally contain a copy of the appropriations act, a narrative summary of changes made by the Fono, amended detailed budget schedules and limitation on spending under the concurrent resolution. The notification is usually issued on the first day of October.

History: Rule 3-83, eff 4 Apr 83, § F.4.

5.0132 Quarterly apportionments.

Quarterly apportionments primarily serve two purposes. First, they serve as a control mechanism for the agency manager to make sure expenditures will not exceed the approved budget at the end of the fiscal year. Secondly, they serve as an advisory to the director of administrative services as to what the total agency cash requirements are for the quarter. Conversely, they act as a means of communicating back to the agencies the need to contain costs to meet cash collections.

Preceding the preparation of quarterly apportionments is the completion of the agency annual work plan (AWP) as required by law. The AWP provides the basis for the computation of quarterly apportionments. See Figure 16 for sample format.

- (a) Initial authorization of the quarterly apportionment will come from the summary budget schedules (Detail-1) submitted for each line account. In the event the agency consolidates several numbered accounts into one line account, summary budget schedules will be

required for each numbered account to be used for control purposes. The planning and budget office will input the approved apportionment for each quarter into the computer based on Figure 17 submitted by the agency.

- (b) Changes in quarterly apportionment may be requested. Required documentation supporting the request will be as follows:

- (1) A letter of explanation summarizing the request;
- (2) A revised apportionment schedule using Figure 17.

Note: Any budget transfer or reprogramming will normally require a change of allotment thus preparation of Figure 17 for all accounts changed will be necessary to effect the transfer or reprogramming.

- (c) Input of changes will be accomplished by the budget staff.

History: Rule 3-83, eff 4 Apr 83, § F.5.

5.0133 Budget transfers.

- (a) A budget transfer is defined as the transfer of a budgeted function from one agency to another for administrative purposes only which does not require a change in purpose nor the approved budget or the transfer of funds between object classes within the same numbered account.
- (b) Request for a budget transfer requires the submission of a letter detailing the transfer, justification and a completed form BUD-14 (see Figure 18 for sample format). In addition, Figure 16 and Figure 17 should be completed to show the change in scope of operation and quarterly apportionment. The planning and budget office will approve or reject the transfer request based on the merits of each case.

History: Rule 3-83, eff 4 Apr 83, § F.6.

5.0134 Budget reprogramming-Generally.

- (a) A budget reprogramming is a transfer of funds which changes the approved character and scope of operation subject to dollar limitations contained in the budget act, between numbered accounts or major program categories (as opposed to object classes) as displayed in the

budget justification submitted to the Fono. A reprogramming of funds between account 041004, director's office and account 044008, grants management division within the department of administrative services is an example of transfers between numbered accounts. A reprogramming of funds from capital improvement projects to operating or special programs constitutes the transfer of funds between major program categories.

- (b) The basic rationale for allowing reprogramming action is to provide public managers the flexibility to deal with contingencies that were not anticipated during the regular budget development process. This flexibility must be dealt with prudently and in consideration of the policymakers' and the people's wishes.

History: Rule 3-83, eff 4 Apr 83, § F.7 (part).

5.0135 Reprogramming rules for local funds.

- (a) Reprogramming between numbered accounts shall be made only once per quarter.
- (b) Reprogramming between major program categories shall be made only once a year and with the Governor's approval.
- (c) Reprogramming of funds between departments or offices shall be made only once a year and with the Governor's approval.
- (d) An approved revised annual work plan is required before any reprogramming action is permitted.
- (e) Line account, for purposes of reprogramming, is defined as numbered account within a department or office, a special program, a capital improvement project, operating programs, special revenue or enterprise funds.
- (f) For control and coordination purposes, the director of budget shall approve all reprogrammings up to \$25,000 or 30% of the line account, whichever is less.
- (g) All reprogrammings which exceed \$25,000 or 30% of the line account must be approved by the Legislature.

- (h) Each reprogramming request is treated as a separate action subject to rules (f) and (g) of this section.

History: Rule 3-83, eff 4 Apr 83, § F.7 (part).

5.0136 Reprogramming rules for DOI funds.

- (a) Grantees shall be subject to the following reprogramming procedures as set forth by the House and Senate Committees on Appropriations on 1 Aug 77:

- (1) Definition. “Reprogramming”, as defined in these procedures, includes the allocation of funds from one budget activity to another. In cases where either committee report displays an allocation of an appropriation below the activity level, that finer level of detail shall be the basis for reprogramming. For construction accounts, a reprogramming constitutes the reallocation of funds from one construction project identified in the justifications to another. A reprogramming shall also consist of any other significant departure from the program described in the agency’s budget justifications.

- (2) Criteria for Reprogramming.

- (A) Any project or activity which may be deferred through reprogramming shall not later be accomplished by means of further reprogramming; but, instead, funds should again be sought for the deferred project or activity through regular appropriation processes.
- (B) A reprogramming should be made only when an unforeseen situation arises; and then only if postponement of the project or the activity until the next appropriation year would result in actual loss or damage. Mere convenience or desire should not be factors for consideration.
- (C) Reprogramming should not be employed to initiate new programs or to change allocations specifically denied, limited or increased by the Congress in the Act or the report. In

cases where unforeseen events or conditions are deemed to require such changes, proposals shall be submitted in advance to the Committee, regardless of amounts involved, and be fully explained and justified.

- (3) Reporting and Approval Procedures.

- (A) Any proposed reprogramming must be submitted to the committee in writing prior to implementation if it exceeds \$250,000 annually or results in an increase or decrease of more than 10% annually in affected programs.
- (B) All reprogrammings shall be reported to the committee quarterly and shall include cumulative totals.
- (C) Any significant shifts or funding among object classifications should all be reported to the committees in a timely manner.
- (D) Reprogramming proposals submitted to the committee for prior approval shall be considered approved after 30 calendar days if the committee has posed no objection. However, agencies will be expected to extend the approval deadline if specifically requested by either Committee.

- (4) Administrative Overhead Accounts. For all appropriations where costs of overhead administrative expenses are funded in part from “assessments” of various budget activities within an appropriation, the assessment shall be shown in justifications under the discussion of administrative expenses.

- (5) Contingency Accounts. For all appropriations where assessments are made against various budget activities or allocations for contingencies, the Committee expects a full explanation, separate from the justifications. The explanation shall show the amount of the assessment, the activities assessed, and the purpose of the fund. The committee expects annual reports each year detailing the use of

these funds. In no cases shall such a fund be used to finance projects and activities disapproved or limited by Congress or to finance new permanent positions or to finance programs or activities that could be foreseen and included in the normal budget review process. Contingency funds shall not be used to initiate new programs.

- (b) It is understood that, where appropriate, federal grant moneys and local revenues shall be spent at the same ratio by which they were appropriated.
- (c) It is understood that the grant(s) here offered represent(s) the total amount of funds available for the fiscal year for which moneys are appropriated.

It is further understood that these funds are not to be used for any purpose other than that for which they are offered, except as in accordance with the guidelines for reprogramming of funds enclosed herein.

- (d) Reporting requirements will be in accordance with the office of management and budget circular A-102. In this regard, please complete and provide us with the following reports as required.

- (1) Financial Status Report-Quarterly. This report will be completed at the end of each quarter and a final report will be completed at the conclusion of the project.

- (2) Federal Cash Transactions Report-Monthly. This report will be completed at the end of each month, and forwarded to office of territorial affairs by the 15th of the following month.

- (3) Request for Advance or Reimbursement-Monthly. The Trust Territory of the Pacific Island and the Northern Mariana Governments will not use this report. Both of these governments will utilize the services of the TT assistant disbursing officer for drawdowns of cash, Virgin Islands is on a letter of credit.

- (e) Unless otherwise indicated, all grant moneys will remain available until expended.

History: Rule 3-83, eff 4 Apr 83, § F.7 (part).

5.0137 Request.

Requests for reprogramming should be in the form of a three page memorandum accompanied by Figures 16, 17 and 18. No more than five days will be allowed for processing the request by OPPBD.

History: Rule 3-83, eff 4 Apr 83. § F.7 (part).

5.0138 Other budget rules.

- (a) No territorial agency may increase the salaries of its employees, employ additional employees, or expend money or incur any obligations except in accordance with law and with a properly approved operations plan.

- (b) New organizational plans and reorganizations affecting the shift of functions, employees and salary reclassifications must be approved by OPPBD before implementation. Position reclassifications, job descriptions and salary determinations are functions of the office of manpower resources. OPPBD is primarily concerned with organizational efficiency, management methods and compliance with the appropriation and budget acts.

- (c) No agency may design and issue new standard forms for government wide use without approval and form number from OPPBD.

History: Rule 3-83. eff 4 Apr 83. § F.8.

IX. PERFORMANCE EVALUATION

5.0139 Quarterly performance reports.

Each ASG agency is required by law to submit a quarterly performance report to the OPPBD on 15 Jan, 15 Apr, 15 Jul and 15 Oct of each year. The report shall consist of the following documents:

- (a) Annual Work Plan. See Figure 16 for sample format. This form is already in use and needs no further instructions.

- (b) Quarterly Budget vs. Expenditure Report. Use RSM 244A computer report format. Significant negative or positive budget variances must be explained on the report. In addition, show as a footnote the total budgeted positions, filled and vacant. Explain the status of vacancies.

(c) Narrative Summary. State the progress made on your annual work plan, problems encountered, adjustments needed to the plan and future outlook for the agency. Progress should be measured in quantifiable terms wherever possible. Use graphs and charts necessary. Your narrative summary should be no longer than three double-spaced typewritten pages.

History: Rule 3-83, eff 4 Apr 83. § 0.1

5.0140 Reviews.

In addition to the quarterly performance reports, agencies will be reviewed by the office of the federal comptroller. Financial and operational audits will also be performed by the office of the Territorial auditor OPPBD from time to time, will make program analyses and performance evaluations of selected agencies. ASG agencies are encouraged to conduct internal evaluation as a management tool for self-improvement.

History: Rule 3-83, eff 4 Apr 83. § G.2.

TITLE 5 - CHAPTER 02 – TERRITORIAL PLANNING COMMISSION RULES

Sections:

- 5.0201 Definitions.
- 5.0202 Authority.
- 5.0203 Chair-person and officers.
- 5.0204 Meetings.
- 5.0205 Attendance.
- 5.0206 Quorum.
- 5.0207 Duties.
- 5.0208 The comprehensive general plan.
- 5.0209 District planning areas and boards.
- 5.0210 Advisory committee.
- 5.0211 Other committees.
- 5.0212 Public participation.
- 5.0220 Business licenses.

5.0201 Definitions.

As used in this chapter the term definitions in 10.0101 A.S.C.A., shall have the meanings ascribed to terms in that section and as supplemented, explained and further defined in this chapter.

History: Rule 16-87, eff 12 Oct 87.

5.0202 Authority.

The territorial planning commission derives its authority to promulgate these rules pursuant to 10.0102(e) A.S.C.A.

History: Rule 16-47, eff 12 Oct 87.

5.0203 Chairperson and officers.

The chairperson of the commission shall be designated by the Governor from among the commissioners. The commission may elect one of its members as secretary. Should the chairperson be unable to attend a meeting, the members shall elect an interim chairperson.

History: Rule 16-87, eff 12 Oct 87.

5.0204 Meetings.

The commission shall meet on the first and third Tuesday of each month at 9:00 a.m. in the office of development planning, unless otherwise announced. Such other meetings and hearings as are necessary for the efficient conduct of its business may be held at such times and places as determined by the chair. All meetings shall be public and may be recorded.

History: Rule 16-87, eff 12 Oct 87.

5.0205 Attendance.

The commission by a majority vote shall recommend to the Governor the need for a replacement for any member who misses 3 consecutive meetings without cause. Cause shall include health reasons and off-island business trips.

History: Rule 16-87, eff 12 Oct 87.

5.0206 Quorum.

A quorum shall be one-half or more of the appointed members in attendance at a meeting. A quorum shall not be lost when members leave the meeting unless the quorum is questioned by at least 1 member still in attendance. No official business can be conducted without a quorum.

History: Rule 16-87, eff 12 Oct 87.

5.0207 Duties.

In addition to duties found in 10.0101 et seq. A.S.C.A., the commission shall have the following jurisdiction and authority:

- (1) To review and approve a comprehensive general plan for the future development of the territory

and to make a report of its findings and recommendations to the Governor and Legislature following public hearings;

- (2) to initiate a review of the provisions of the zoning law and to make a report of its findings and recommendations based on the comprehensive general plan;
- (3) to hold public hearings on elements of amendments to, and the total comprehensive general plan to review public opinion;
- (4) to prepare revisions annually as needed coinciding with the fiscal year;
- (5) to prepare necessary documents for the Governor and Legislature summarizing the highlights and the budget implications, if any, of the comprehensive general plan.

History: Rule 16-87, eff 12 Oct 87.

5.0208 The comprehensive general plan.

- (a) The comprehensive general plan may be concerned particularly with industrial, commercial or agricultural development; with education, social services, housing, essential fire, water and electric utilities services, and with transportation, communications, recreation, conservation, cultural services and with other relevant aspects of life in American Samoa.
- (b) In order that a comprehensive general plan may be developed for the territory, it is desirable that any of its foregoing subjects be considered in terms of:
 - (1) defining existing problems, policies, and plans;
 - (2) establishing goals;
 - (3) developing and evaluating the impact of alternative strategies;
 - (4) determining any necessary revisions to local decision-making processes; and
 - (5) developing an implementation plan, having broad-based community support, which defines priorities and assigns responsibilities for action.

(c) The comprehensive general plan shall be established for the following purposes;

- (1) to promote the public health, safety, morals, convenience, comfort, prosperity and general welfare of the residents of American Samoa;
 - (2) to preserve a wholesome, serviceable and attractive community that increases the safety and security of home life;
 - (3) to prevent congestion, disorder and changes: and
 - (4) to prevent overcrowding, and other conditions which generally tend to diminish the well-being of residents.
- (d) To accomplish the purposes stated in this section, the territory is divided into 6 planning districts as stated in 10.0105 A.S.C.A., to promote the public health, safety, welfare and morals.

History: Rule 16-47, eff 12 Oct 87.

5.0209 District planning areas and boards.

The commission shall meet with each planning district boards or all such boards as a need arises but shall meet with them at least once each year.

History: Rule 16-87, eff 12 Oct 87.

5.0210 Advisory committee.

- (a) Pursuant to 10.0102(c) there is an advisory board to the commission which shall consist of 7 department and office heads or their delegates of the government of American Samoa. The commission shall name the advisory committee annually at its meeting in October or as needed to replace members.
- (b) The commission by majority vote shall decide what departments or offices shall be requested to serve on the advisory committee and may request particular talent, expertise or persons in such departments or offices.
- (c) Members of the advisory committee shall be expected to attend certain commission meetings and may work with the planning district as well.

- (d) The following departments or offices shall be ex officio members of the committee:
- (1) Office of development planning;
 - (2) Department of public works;
 - (3) Office of the attorney general; and
 - (4) Department of parks and recreation.

History: Rule 16-47. eff 12 Oct 87.

5.0211 Other committees.

The chairperson may name additional committees of the commission to perform certain investigations or tasks to report back to the commission. These may be committees of the whole or committees of no less than 3 members of the commission. Committees shall report to the commission in a public session with its recommendations or report.

The commission may accept, reject or amend the recommendation or report of any committee.

History: Rule 16-47. eff 12 Oct 87.

5.0212 Public participation.

- (a) All persons addressing the commission at a public hearing shall identify themselves by name, village of residence, and, if applicable, employment or group affiliation. Persons may make oral or written presentation in person or through a representative or attorney. The chairperson may limit any oral presentation to no more than 5 minutes duration to allow for full participation. The chairperson may require representation scheduling of persons who wish to address the commission to ascertain the number of presentations for full participation and to set equitable time limits.
- (b) Prior to recommending a plan to the Governor and Legislature the commission shall hold a public hearing(s) so that all parties in interest and residents will be given an opportunity to be heard in respect to the plan. Notice shall be sent to the press and media and all other means reasonably to attract public attention at least 15 days prior to any hearing relative to a plan or the comprehensive general plan. Said notices shall also be sent to the Governor, the President of the Senate, the Speaker of the House, director of the office of development planning, the attorney

general, director of public works, members of the advisory committee, and members of the district planning boards(s) affected.

History: Rule 16-87, eff 12 Oct 87.

5.0220 Business licenses.

- (a) Pursuant to 27.0201 et seq., A.S.C.A., the commission will review all new applications for a business license including those filed by individuals, partnerships and corporations. “New business licenses” includes first applications for a business license, for additional locations and relocations, and applications for businesses which have changed ownership. All individuals, partnerships and corporations regardless of race, sex, national origin, or status in the territory will be subject to this review.
- (b) The applicant shall file with the commission the business license application, the partnership agreement or articles of incorporation if a partnership or a corporation, a copy of any requests filed or to be filed with the zoning board for a variance, including but not limited to a description the location, a plot plan showing existing and proposed structures with necessary dimensions indicating yard spaces and adjoining structure when required, and a ground and typical floor plan of the building showing work area, bathrooms, water and sewage facilities, storage area, and other uses with all necessary measurements.
- (c) The applicant shall be given at least a day notice of a hearing at which time the applicant shall be prepared to discuss with the commission the following factors:
- (1) traffic safety;
 - (2) adequate parking facilities;
 - (3) availability of water and sewage facilities;
 - (4) effect on land resources and economic opportunities for resident Samoans;
 - (5) effect on Samoan customs, culture and traditions; and
 - (6) conformity to the general comprehensive plan and the general economic plan.

History: Rule 16-87. eff 12 Oct 87.

END OF TITLE 5 – PUBLIC PLANNING
BUDGET AND DEVELOPMENT

TITLE 6 – REVENUE

Chapters:

- 01 Income Tax
- 02 Rental Space of Market Place for Bingo Games
- 03 Enforcement and Collection of 2% Sales Tax

TITLE 6 - CHAPTER 01 – INCOME TAX

The income tax rules of the United State Government, in force on 1 Jan 78 and thereafter adopted, where not clearly inapplicable or incompatible, are effective in American Samoa in accordance with 11.0403(a) A.S.C.A.

TITLE 6 - CHAPTER 02 – RENTAL SPACE OF MARKET PLACE FOR BINGO GAMES

Sections:

- 6.0201 Rental charge amended.

6.0201 Rental charge amended.

Pursuant to the authority, requirements, and provisions of 4.1002 and 4.1004 A.S.C.A., the regulation of the Department of Agriculture which currently provides for a rental charge of \$100 per bingo game held at the Market Place, is amended as follows:

There shall be a rental charge or fee of \$200.00 for each Bingo game held at the premises of the Market Place, Fagatogo, American Samoa, effective 1 July, 1983.

History: Rule 9-83, eff 1 Jul 83.

TITLE 6 - CHAPTER 03 – ENFORCEMENT AND COLLECTION OF 2% SALES TAX

The emergency rule on the suspension of enforcement and collection of the 2% sales tax, dated January 4, 1989, has been included in this chapter for historical information only at the suggest on of the Legal Counsel to the Governor.

EMERGENCY RULE ON THE SUSPENSION OF ENFORCEMENT AND COLLECTION OF THE 2% SALES TAX

WHEREAS, it has been the experience of this department that the collection and enforcement of the 2% sales tax has been a problem due to lack of proper records which we find that is impractical to require large number of business establishments to accomplish; and

WHEREAS, the sales tax collected during FY 1988 was less than 40% of the estimated sales transactions;

WHEREAS, it is my conclusion that the enforcement and administration of the sales tax in the last three years was not fairly and efficiently executed;

NOW THEREFORE, pursuant to provisions of Section 11.0317, A.S.C.A., and Section 4.1010 of the Administrative Procedures Act, I hereby declare that effective immediately the enforcement and collection of the 2% sales tax are hereby suspended for a period of 120 days so that the new administration could review the entire matter.

Dated: January 4, 1989

BY THE ASG TREASURER:

END OF TITLE 6 – REVENUE

TITLE 10 – PUBLIC DOCUMENTS

Chapters:

- 01 Government Property Management
- 02 Procurement

TITLE 10 – CHAPTER 01 – GOVERNMENT PROPERTY MANAGEMENT

Sections:

- 10.0101 Authority.
- 10.0102 Purpose.
- 10.0103 Director of material management duties.
- 10.0104 Accountable officers-Department and agency head responsibility.
- 10.0105 Property management officers.
- 10.0106 Transaction code.
- 10.0107 Definitions.
- 10.0108 Receiving-Acknowledging-Responsibility and records.
- 10.0109 Receiving-Receiving report.
- 10.0110 Identification markings-Required-Means.
- 10.0111 Identification markings-unmarkable apparatus-Large items.
- 10.0112 Identification markings-Property numbers.
- 10.0113 Identification markings-Motor vehicles.
- 10.0114 Identification markings-Removal before disposition.
- 10.0115 Classification-Responsibility.
- 10.0116 Classification-Guidelines.
- 10.0117 Records generally.
- 10.0118 Transfer of accountability.
- 10.0119 Responsibility records.
- 10.0120 Clearance upon separation or transfer.
- 10.0121 Inventory-Reports.
- 10.0122 Liability and accountability-relief provisions-Scope.
- 10.0123 Relief from accountability.
- 10.0124 Survey and report-Required when.
- 10.0125 Disposal not requiring survey.
- 10.0126 Certificate of loss or damage.
- 10.0127 Survey authority.
- 10.0128 Survey board.
- 10.0129 Survey review authority.
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10.0101 Authority.

The authority for exercising control and management of government property in the ASG is vested in the director of material management. Section 4.1002 A.S.C.A., constitutes the basis for the issuance of the manual codified in this chapter and for all actions by the director in matters relating to the management and control of public property.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § (part).

10.0102 Purpose.

The purpose of this chapter is to prescribe adequate and uniform procedures throughout the ASG for accounting for all equipment, materials, and supplies under the jurisdiction of the department of material management. Compliance with the basic requirements established in this chapter will ensure that proper records of all personal property are maintained and that such property is protected, preserved, and used only for official purposes.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).

10.0103 Director of material management duties.

- (a) The director of material management shall manage and control government property and shall have authority over the disposition and use of such property, including inventorying and establishing forms and procedures for sale, rental, or other disposition of such property.
- (b) The director of material management shall list all real estate belonging to or under lease to the government, showing the agency controlling, location, metes and bounds, cost when acquired, persons to whom leased, and other details.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).

10.0104 Accountable officers-Department and agency head responsibility.

All property acquired by the government will be charged to an accountable officer. The safeguarding of property and maintenance of proper records thereof shall be considered a primary responsibility of these officers it is the responsibility of the head of each department or agency to make certain that public property under his custody and control is properly utilized and protected against damage or loss.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).

10.0105 Property management officers.

The head of a department or agency may designate an officer or employee of his department or agency to perform the functions prescribed. The officer or employee so designated, as responsible for supervising the property management program of his department, shall be the property management officer, regardless of his payroll designation or any other title or function assigned to him.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § i (part).

10.0106 Transaction code.

For describing the type or nature of a transaction, including the acquisition or disposition of fixed assets, by means of a numerical code, the following transaction code has been developed and prescribed, and will be shown on reports submitted to the director of material management:

- Acquisition
 - 01- Purchase
 - 02- Construction
 - 03- Transfer in
 - 04- Donation
 - 05- Omission (erroneously omitted from previous inventory)
 - 06- Judicial process
 - 07- Acquisition not otherwise classified Disposition
- 11- Sale
- 12- Transfer out

13- Destruction

14- Disposition not otherwise classified.

History: Rule 3-78, eff 17 Apr 78, 300 GASM ii.

10.0107 Definitions.

Subject to additional or more detailed definitions in the Accounting Manual of the department of administrative services, and unless the context otherwise requires:

- (1) “building” means any structure erected aboveground, together with its appurtenances, the principal purpose of which is for sheltering persons or property. The term also includes but is not limited to schools, libraries, offices, warehouses, clinics, hospitals, homes, and housing units
- (2) “capitalization” (“to capitalize”) means the assignment of a dollar value to property for the purpose of reflecting such value on property accountability records and general ledger asset accounts;
- (3) “capitalized property” means property which has been entered on the records as an investment or asset and includes “non expendable property” which, for management and/or accounting purposes, is to be carried as capital assets until disposed of in accordance with law;
- (4) “construction work in progress” means the cost of construction work undertaken and being performed but not yet completed and accepted;
- (5) “equipment” (including machinery) means an article of personal property which is complete in itself, is of durable nature with an expected service life of 1 year or more, and does not ordinarily lose its identity or become a component part of another article when put into use. The term includes but is not necessarily limited to machinery; heavy-duty tools; trucks; cars; office, school, and household furniture’s and furnishings; or any durable item required to equip an individual or activity to do a job;
- (6) “expendable” means those categories or specific items of personal property which have been classified for property control and/or cost accounting purposes as expendable and the cost

or appraised value thereof is to be charged as an expense when received or issued, depending upon cost accounting system applied. The value of quantities of expendable items held in stores or redistribution centers pending issue is recorded as an asset;

- (7) “improvements other than buildings” means and includes all improvements and attachments to the land such as roads, walkways, playgrounds, and lighting facilities and fixtures;
- (8) “land” means all parts of the earth’s surface owned by the government, regardless of the purpose and/or use. Land held under lease is not owned and should be omitted from the account;
- (9) “maintenance” refers to the routine recurring work required to keep property in substantially original condition. It may include replacement of minor constituent parts, materials, or supplies;
- (10) “material and supplies” means and refers to all items necessary for the equipping, maintenance, repair, operation, and support of governmental activities and services;
- (11) “nonexpendable” means those categories or specific items of personal property which, for property management and/or accounting purposes, are to be carried as capital assets of a department, bureau, or activity until disposed of by transfer, sale, or otherwise;
- (12) “personal property” means all property other than land and buildings. Items in this category are classified as “expendable” and “nonexpendable” property.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.1.

10.0108 Receiving-Acknowledging-Responsibility and records.

Certain basic principles are involved in the receiving of government property and shall be observed when assigning the responsibilities of this function. These principles include:

- (1) acknowledging receipt. The individual who signs the receiving report is certifying that the property listed thereon has been received, and his signature serves as the basis for the expenditure of government funds. All incoming shipments

shall be physically counted and inspected to insure that the quantity ordered has been delivered and that articles received meet the specifications. Any defects or damages to the property shall be noted at the time of inspection. Articles which require technical identification or inspection shall be examined by the receiving individual in conjunction with other qualified personnel;

- (2) establishing initial responsibility. The property management officer or individual acting in that capacity assumes responsibility for all personal property received at the time the equipment or supplies are accepted and the receiving report is executed. The property management officer shall be responsible for the identification of all nonexpendable personal property acquired by the agency in accordance with the provisions of this chapter;
- (3) establishing accountability. The accountable officer, the head of the department or agency shall establish prescribed accountability records for all property acquired or entrusted to him immediately upon receipt of documents evidencing the receipt of such property.

History: Rule 3-78, 17 Apr 78. 300 GASM § 1.1.

10.0109 Receiving-Receiving report.

All departments will formally document the receipt of all personal property, whether such property is acquired from commercial sources, donated, recovered, or obtained by transfer from another government agency.

- (1) Property received shall be recorded on a receiving report to provide a document of entry to the records and accounts and to substantiate the disbursement voucher. Appropriate receiving documents shall be prepared as soon as possible after receipt of the property.
- (2) Special handling shall be given receiving reports involving time discounts.
- (3) Receiving Report, GAS form MT/MGT 32 (see Appendix 1) shall be used for the purpose of carrying out the provisions of this section.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 1.2. There are two sections numbered 2 in Ch. 1 of Rule 3-78. 300 GASM.

10.0110 Identification marking-Required-Means.

All government property classified as non-expendable, except as exempted elsewhere in this chapter, shall be permanently marked to identify it as government owned. Markings may be accomplished by any means which will produce permanency and which will be most adaptable to the particular type of property.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 1.2. There are two sections numbered 2 in Ch. 1 of Rule 3-78, 300 GASM,

10.0111 Identification markings-Unmarkable apparatus-Large items.

- (a) Very small, delicate, or precision apparatus, which cannot be marked in a permanent manner without damage to the equipment, is exempt from any requirement for marking or numbering. The number assigned to such equipment, however, shall be recorded on the property cards established for the equipment.
- (b) The larger, or more significant items of nonexpendable property, including but not limited to office furniture and ship equipment, shall be marked with the property number assigned thereto.

History: Rule 3-78, eff 17 Apr 78. 300 GASM § 1.3.

10.0112 Identification markings-Property numbers.

Each item or group of items of nonexpendable property shall be assigned an identifying property number by the head of the division of property, department of material management. Decimal suffixes may be added to the property number in order to specifically identify individual items as may be determined. The numbers assigned shall be entered on the property records for the item.

History: Rule 3-78, eff 17 Apr 78, 300 GASM 1.4.

10.0113 Identification markings-Motor vehicles.

All motor vehicles of the ASG, except those excepted elsewhere in this chapter, shall bear special markings and identification consisting of the following:

- (1) “For Official Use Only”;
- (2) ASG decalcomania;
- (3) Identification plates; i.e., plates numbers prefixed by letters, indicating department or office.

History: Rule 3-78, eff 17 Apr 78, 300 GASM 1.5.

10.0114 Identification markings-Removal before disposition.

When property is sold or otherwise permanently removed from government service, all identification markings which indicate that the property was previously owned by the government shall be removed prior to disposition.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 1.6.

10.0115 Classification-Responsibility.

- (a) It is the responsibility of each department, bureau, and/or agency to classify items of property as expendable or nonexpendable within the meaning of these terms as defined in this chapter and in the ASG Accounting Manual.
- (b) Nonexpendable property should be further classified to indicate whether it should generally be capitalized, noncapitalized, or considered with materials and supplies for physical and financial control purposes. The division of property, department of material management will, in cooperation with all departments, classify all personal property in accordance with the provisions of this chapter to ensure uniformity at all organizational levels.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.2.

10.0116 Classification-Guidelines.

In making the determination as to proper classification of the various items of nonexpendable property, consideration will be given to such factors as acquisition cost, expected useful life, use, susceptibility to personal uses, cost of possible accountability and/or responsibility records

compared with cost of possible increased losses if such records are not maintained, as well as any other factors which may have a bearing on the classification. It will be necessary to use good judgment in applying these factors to individual items since the classification placed on an item will, to a with great extent, determine the type of inventory user, control and accounting records to be maintained therefor,

- (a) As a general rule, any single item of equipment costing more than \$100 should be capitalized. Classification of any given item of equipment should be consistent; however, in cases where a portion of the inventory of the item is acquired at a cost of \$100 or less and a portion at a cost of over \$100, the entire stock of a given item should be accounted for as either capitalized or noncapitalized equipment, as the case may be.
- (b) Examples of nonexpendable property items which fall under the capitalized equipment classification are: motor vehicles, office machines, surveying instruments, and similar major items of equipment which have a long expected service life and generally represent a major investment in personal property.
- (c) Examples of nonexpendable property items which will generally fall under the noncapitalized equipment classification are: small hand tools, and similar relatively low cost minor items of equipment which are frequently worn out after a comparatively short period of service,
- (d) Due to a high rate of breakage in service, a normally short service life, or an insignificant value, certain items of property nonexpendable by definition may, at the discretion of the director of material management, be administratively classified as expendable and treated as such in all respects. Examples of items which may be considered as expendable are glassware, tinware, brushes, drill bits, file baskets, pencil sharpeners, and like items which, in the opinion of the director of material management do not warrant the same measure of control and attention as do those composing the capitalized and noncapitalized classifications.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.3.

10.0117 Records generally.

- (a) Fiscal Accounting Records. The value of nonexpendable property acquired and disposed of shall be recorded in the records and accounts prescribed in this chapter and as determined by the director of administrative services as defined in the Accounting Manual.
- (b) Accountability Records. Accountability records shall be established and maintained to cover nonexpendable property as prescribed in this section.
- (c) Capitalized Equipment. The general ledger control account for capitalized property shall be supported by detailed property records to adequately identify the units of equipment the costs of which are charged to equipment accounts; provided a permanent record of the acquisition and disposition of all capitalized property; and provide information needed for inventory control and management purposes. This record will generally be known as the nonexpendable property accountability record, but may be supplemented by such other accountability or property records as may be necessary or desirable for property management purposes. These records shall be subject to both internal and external audit and all entries made therein must be adequately supported by valid acquisition and disposal documents.
- (d) Noncapitalized Equipment. The use of accountability records for noncapitalized equipment is not required by this title; but, rather, their use is discretionary with the head of each department, bureau, or agency.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.4.

10.0118 Transfer of accountability.

When an accountable officer is to be relieved of accountability, the incoming accountable officer shall be required to accept, formally, full responsibility and accountability for all government owned property involved in the transfer of accountability. This may be accomplished in either of 2 ways:

- (a) An itemized list of property of all classes may be compiled from the property records, showing, as

a minimum, the quantity and adequate description of the items involved.

- (1) Receipt of the property shall be acknowledged thereon by the incoming accountable officer, after such verification and inventory as the incoming officer deems necessary to satisfy himself as to its correctness.
- (2) Prior to transfer of the property, any coverages which may be disclosed as the result of physical inventory shall be taken up in the records and accounts of the outgoing accountable officer, and any shortages adjusted.
- (3) Inventory of Property, GAS form MT/MGT 18 and continuation sheet (see Appendix 2) may be used for the purpose of compiling the list of property referred to above, and for formally documenting transfer of accountability. This list and receipt shall be prepared in triplicate, the original to be retained by the officer relieved, the duplicate to be filed by the incoming officer, and the triplicate forwarded to the head of the division of property, department of material management.

- (b) If the incoming officer is satisfied that the property records are accurate and he is willing to assume full liability for all property recorded therein without physical verification, he may, as an alternate, execute a certificate in the following or similar form:

_____date
 I _____ (Name)
 _____ (Official designation), incoming accountable officer, have satisfied myself that the expendable and nonexpendable property accountability records of (Department or Agency) are accurate; and that the property recorded therein is physically on hand as of this date.

I HEREBY AGREE to except full responsibility and pecuniary liability for property as recorded and waive

any requirement for a physical inventory as a condition of such acceptance.

(Signature)

(Official Designation)

The original certificate shall be forwarded to the division of property and each party to the transfer of accountability shall retain a copy.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.5.

10.0119 Responsibility records.

To fix the responsibility for capitalized equipment, a receipt shall be obtained when such property is issued to individuals or transferred from the custody of 1 individual to another. Such receipts shall be filed in a manner which will allow the total holdings of capitalized property in the possession of each employee to be determined readily. However, certain items, although in use, but not in the custody of any 1 employee, may be controlled by means of location records in lieu of the receipt for property procedure described in this section, at the discretion of the head of each department or agency.

- (a) Examples of items which can generally be controlled by use of location records are major shop equipment and similar items which are normally assigned for use by several different employees rather than for specific use of a single individual. When this procedure is used, responsibility for such property shall be vested in the accountable officer in any event, employees having capitalized equipment or other government property in their custody may be adjudged financially liable for its loss or damage by a proper board of survey action.
- (b) Responsibility records of the type prescribed in this section for capitalized equipment are not required to be maintained for non-capitalized equipment. However, departments and agencies shall ensure that appropriate safeguards and controls are established at the operating office level whenever experience at the location indicates that such action is necessary to guard against:

- (1) excessive losses of any specific item;
- (2) excessive purchases or withdrawals when compared to program requirements for any specific item; or
- (3) use of property for other than official purposes.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 2.6.

10.0120 Clearance upon separation or transfer.

Upon separation or transfer of an employee, a physical inventory shall be taken of all property in his custody. If all property is satisfactorily accounted for, property clearance shall be given the employee. Certification for final salary payment shall be withheld until this clearance has been granted, which shall be prior to issuance of the employee's final salary check.

History: Rule 3-78, eff 17 Apr 73, 300 GASM § 2.7.

10.0121 Inventory-Reports

Physical inventories of personal property shall be conducted at periodic intervals in accordance with the following:

- (a) Capitalized Equipment. The property management officer of each department or agency shall conduct a complete physical inventory of all capitalized equipment at least once annually, but they may be taken at more frequent intervals at the discretion of the head of the division of property, department of material management. A physical inventory shall be taken at intervals more frequently than annually whenever experience at any given location or with any given item indicates that this action is necessary for effective property accounting, utilization, and control.
- (b) Noncapitalized Equipment. Noncapitalized equipment shall be inventoried to the extent and in the manner provided by the proper division, department of material management; except, that in any event a physical inventory shall be made of all noncapitalized equipment charged to an individual employee upon his transfer or separation. Such employee shall be charged with the estimated market value of any items not produced at this time, except as he may be

relieved from such financial liability by survey action or certificate of loss procedures, as appropriate.

- (c) Reconciliation. The results of the prescribed physical inventories of property, except that which is exempted, shall be reconciled with the responsibility, accountability, stores, and such other records as may be maintained for inventory control purposes. Any differences between the physical inventory of materials and supplies and the quantities shown on stores records shall be promptly adjusted and such adjustments adequately documented. In the case of nonexpendable property, rechecks and adjustments shall be made within 120 days after the effective date of the inventory. The head of the property division, department of material management shall conduct periodic inspections or audits as deemed necessary to verify the accuracy of the recordings of the respective departments or agencies. The findings of the head of the property division shall be submitted to the director of material management.
- (d) Inventory Report. After completing the physical counting and reconciliation process the accountable officer shall certify in writing to the head of the property division of the department of material management that such inventories have been completed and that subsidiary card records reflect actual quantities on hand and are in agreement with general ledger control accounts. Forms GAS MT/MGT 26A and 27A (see Appendices 8 and 9) may be used for reporting purposes and for recording the results of the inventory.
- (e) Transaction Report. At the end of each accounting period, a report shall be prepared and submitted to the treasurer/director of administrative services summarizing all transactions incurred during the period. This report will show the balance carried from last report, a summary of new acquisitions (list P.O. or Stub No. involved and cost), a summary of dispositions made (see Appendix 15) and a new balance will be shown. Should the treasurer find that the report does not agree with the general

ledger he shall cause an investigation to reconcile the difference.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 3.1.

10.0122 Liability and accountability-relief provisions-Scope.

Sections 10.0122 and 10.0123 set forth basic requirements for the appointment of boards survey or other authorities to (1) investigate circumstances surrounding lost, stolen, damaged, and unserviceable property and (2) report Findings and make recommendations for the fixing of or the relief from personal liability for damaged or missing property. Sections 10.0122 and 10.0123 also provides for review of the actions of boards of survey by the property division, department of material management, and for the director of material management to make the final determination as to financial liability and disposition of the property.

History: Rule 3-75, eff 17 Apr 78, 300 GASM § 4.1.

10.0123 Relief from accountability.

An accountable officer may be relieved of accountability for property by the following methods:

- (1) Transfer of accountability to another accountable officer;
- (2) Transfer of available property to another accountable officer within the department and/or transfer of excess property to other governmental agencies;
- (3) Sale of property under conditions and limitations authorized by current laws and regulations;
- (4) Authorized condemnation and destruction, abandonment, or donation of property;
- (5) Loss, including theft and accidental destruction of property, when documented by an approved report of survey or certificate of, loss.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 4.2.

10.0124 Survey and report-Required when.

Survey action and a report of survey, GAS form MT/MGT 31, illustrated in Appendix 3, are required to authorize and/or document the following property transaction and circumstances:

- (1) Loss of property exceeding \$100 in original cost. Losses of \$100 and less shall be subject to report of survey procedures if not documented by a certificate of loss as provided in 10.0126;
- (2) Condemnation for salvage, reduction to scrap, destruction and abandonment of property regardless of circumstances;
- (3) Donation to public bodies;
- (4) Property damage exceeding \$100 in value, except damage resulting from motor vehicle accidents which are investigated and reported as provided in existing law and regulations. Damages of \$100 and less shall also be subject to report of survey procedures if not documented by a certificate of loss as provided in 10.0126;
- (5) Any circumstance, except motor vehicle accidents, in which there is a possibility of a claim against the government in connection with the administration, care, and use of its property.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.1.

10.0125 Disposal not requiring survey.

Survey action is not required to authorize the following type of property disposals, all of which are otherwise authorized and amply documented:

- (1) Transfer of available and excess property to any other governmental activity;
- (2) Sale on nonreportable property after circularization as available;
- (3) Sale of surplus property. However, in cases involving reportable property, the sale thereof may not be made until after release by the department of material management;
- (4) Sale of scrap material;
- (5) Donation of surplus property for educational, public health, and civil defense purposes;
- (6) Sale or exchange of personal property where the exchange allowance or proceeds of sale are to be applied against the purchase price of replacement items.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.2.

10.0126 Certificate of loss or damage.

A certificate of loss or damage (see Appendix 10) may be used in lieu of a report of survey to document losses of or damages to property provided the total amount of the loss or extent of the damage to all items contained in the certificate does not exceed \$100 and possible claims against the government are not involved.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.3.

10.0127 Survey authority.

When survey action is required as prescribed in this chapter, and as may be directed by the head of the property division, department of material management, it shall be conducted by the authorities set out in 10.0128 and 10.0129.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.4.

10.0128 Survey board.

- (a) Authority for survey boards is found at 4.0302 A.S.C.A.
- (b) Boards of survey, consisting of not less than 3 members, shall be appointed by the Governor. In case of property to be surveyed, neither the accountable officer nor the responsible employee for such property shall be a member of the board of survey. A standing board may be appointed to act on all cases or the board may be selected on a case-by-case basis. (c) Special boards of survey shall be appointed by the Governor.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.5.

10.0129 Survey review authority.

Authority to approve or disapprove reports of survey and certificates of loss vested in the Lieutenant Governor of American Samoa.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.6.

10.0130 Survey board investigation-Findings and liability-Scrapping.

Boards of survey shall fully investigate matters submitted to them. They will call for all evidence obtainable and will not limit inquiries to evidence or statements presented by parties in interest. They will examine and verify all evidence presented and available, and make recommendations consistent

with the circumstances and findings disclosed by such examination.

- (a) In the case of damaged property, the board of survey or traveling survey officers will usually recommend that the employee be relieved of financial liability unless its findings disclose that:
- (1) the property involved was being used for other than official purposes; or
 - (2) the employee failed to exercise reasonable precautions with regard to the care, use, and custody of the property in the particular circumstances. Inexpert use of property in carrying out official business resulting in damage will not usually justify holding the employee financially liable.
- (b) In the case of missing property where the employee is able to show when and under what circumstances the property was lost, the board of survey will usually make its recommendations concerning financial liability by following criteria similar to that for damaged property.

Where the employee is unable to produce missing property and is unable to explain meaningfully the circumstances under which it disappeared, the board will usually be concerned with the question as to whether the employee had or should have had adequate control over the custody of the property. If the nature of the property or the circumstances of the employee's holding it were such that custody and control were unimpaired, the board would understandably be reluctant to recommend that the employee be relieved of financial liability.

- (c) Boards of survey should carefully examine property being surveyed. Where the board finds that the property has further usefulness, either as is or after justifiable repairs or reconditioning, it may recommend that the property be continued in service.
- (d) Where final board of survey action directs that the destruction or reduction to scrap of property, such disposition shall be witnessed by at least 1 member of the survey board and an inspector of

the property division, department of material management.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.7.

10.0131 Liability question separability-Loss evaluation-Survey action deferral.

Boards of survey's action in determining whether to hold an employee financially liable for damaged or missing property entrusted to him should be taken apart from and without prejudice to whatever action of a personnel nature may be appropriate. The question of financial liability must be kept separate from such questions as the appropriateness of retraining, transferring, reprimanding, suspending, dismissing, or even commending the employee.

- (a) When an employee is found liable for property loss or damage by board of survey action, or when he voluntarily accepts liability, it shall be the responsibility of the accountable officer to establish the government's claim against the employee. Restitution should be sought to the extent of the government's loss. In the case of damaged property, the government's loss will usually be (1) the cost of necessary repairs or (2) the estimated market value after, as compared with before, the damage occurred. In the case of missing property, the measure of the government's loss should be the appraised value based on the last known condition of the property.
- (b) In any instance involving property irregularities subject to the provisions of this chapter, final board of survey action should be deferred until completion of action by the director of material management.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.8.

10.0132 Appeal of liability finding.

An employee held liable for damaged or missing property by action of a board of survey shall have the right to appeal to the appropriate reviewing authority. It is desirable that such appeals be made through the usual channels.

History: Rule 3-72, eff 17 Apr 72, 300 GASM § 5.11.

10.0133 Theft or damage reporting.

Thefts or damages to government property shall be reported simultaneously to the property division, department of material management and to the attorney general, department of legal affairs. Copies of such reports shall be used as pertinent attachments to reports of survey.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 5.12.

10.0134 Fixed asset classes-Designated.

(a) The fixed assets of the ASG are divided into the following 6 classes:

1. Land;
2. Buildings;
3. Other structures and facilities;
4. Equipment under unit control;
5. Equipment under collective control;
6. Work in progress.

(b) The numbers appearing on the left in subsection (a) of this section are for identification purposes and constitute the first digit of each class in the property identification that appears in 10.0112.

History: Rule 3-78, eff 17 Apr 78, 300 GASM Ch.6 (part).

10.0135 Fixed asset classes-1. Land.

1. Land: This classification includes all land owned by the government of American Samoa, regardless of method of acquisition. It does not include any buildings or structures on the land.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.1.

10.0136 Fixed asset classes-2. Buildings.

2. Buildings: This classification includes permanent buildings which may or may not be connected with other structures by passageways. In addition to the building itself, it includes plumbing, heating, ventilating, sanitary, mechanical, electrical work, lockers, and cabinets which are made a part of the building.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.2.

10.0137 Fixed asset classes-3. Other structures and facilities.

3. Other structures and facilities: This classification consists of nonexpendable items accounted for as a single unit or entity. It must meet 1 or more of the following conditions:

- (1) The cost of the individual piece of equipment is \$100 or more;
- (2) It has a serial or model number given it by the manufacturer;
- (3) Replacement policy for the equipment is determined by such pertinent factors as the relationship of the maintenance cost of the acquisition cost of the unit and the observation required of the individual performance or characteristics of the unit.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.3.

10.0138 Fixed asset classes-5. Equipment under collective control.

5. Equipment under collective control.

(a) This classification applies to equipment that is accounted for as a group rather than as single units. The individual piece of equipment loses its identity as such and is one of a group. For this purpose, the equipment must be the same with respect to function, material, shape, and size.

(b) Equipment under collective control must meet 1 or more of the following conditions:

- (1) The cost of each item in the group must be less than \$100;
- (2) It has no serial or model number given it by the manufacturer,
- (3) The relationship of maintenance cost to the acquisition cost of the equipment and the observance of its performance are not pertinent factors in determining replacement policy.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 6.5.

10.0139 Fixed asset classes-6. Work in progress.

6. Work in progress: This classification will apply to construction projects which have been started but not completed and accepted. Temporary records will be maintained to support the value of the work in place as reported. The department of administrative services will be required to furnish a copy of each paid partial payment voucher in order that the property records may be in accord with that department of administrative services satisfactory completion of the project acceptance by the ASG the total cost completed project will be added to the private inventory account.

History: Rule 3-7 8, eff 17 Apr 78, 300 GASM § 6.6.

10.0140 Storage-Scope and purpose of provisions.

This section through 10.0143 prescribe basic requirements for the storage of equipment, materials, and supplies acquired by the ASG. This section through 10.0143 will not attempt to cover every conceivable condition or problem that will arise in connection with the storage of various commodities. With a reasonable exercise of judgment, as well as a reference to reputable and recognized standards, and compliance with safety techniques and standards of the division of fire, department of public safety, these provisions will enable and assist each department to achieve the desired objectives.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 7.1.

10.0141 Storage-Objectives.

Storage objectives include such factors as maximum utilization of space consistent with adequate care and protection of property; positive item identification; effective conservation of time, labor, and equipment; and the rapid, easy movement of property from the storage area to the point of use or consumption. Storage methods and procedures vary according to the amount and type of available space, labor, equipment, and the quantity and type of property stored.

The basic objectives set forth in 10.0142 and 10.0143 are recommended as guides in planning and storage of personal property.

History: Rule 3-7 8, eff 17 Apr 78, 300 GASM § 7.2.

10.0142 Storage-Arrangement and accessibility.

Orderly arrangement is essential to efficient operation of storehouses. All items, whether stored in bins, bays, in bulk or in original containers should be so arranged that nomenclature and quantity may be readily determined. Efficient storage demands the maximum utilization of space with a minimum amount of labor. Where practical, labor should be conserved by use of modern materials handling equipment and storage aids.

Fast moving items should be stored in convenient locations from which they can be issued with minimum handling. Stock of individual items or classes of items should be segregated to facilitate handling, issuing, and inventorying.

- (a) Protection. Types of property should be stored according to the kind of protection required. Protection requirements will vary greatly with the types of commodities stocked. All items must be protected from fire and theft. Certain items require protection from dampness, heat, and hazardous characteristics, and are stored separate from other stocks. These factors, as well as maximum protection of property against all causes of deterioration or destruction, must be considered in selecting proper storage locations.
- (b) Rotation. Stock rotation is based on the general storage principle of “first in, first out”. The fact that many items, for example, perishables, foodstuffs, medicines, paints, chemicals, etc., are subject to deterioration or infestation, requires that the oldest stock be issued first.

History: Rule 3-78, eff 17 Apr78, 300 GASM § 7.3.

10.0143 Storage-facilities.

Adequate storage facilities shall be provided at each location to ensure the proper safeguarding of all government property. Facilities required will vary largely between the projects and other activities of the various departments and agencies. Actual requirements will depend upon such factors as volume of property to be handled, characteristics of commodities to be stored, and nature of the operations.

- (a) Indoor. Indoor storage areas should be arranged to obtain proper stock protection and maximum

utilization of space within established floor load capacities, but should be subject to flexibility to provide for periodic changes in specific space requirements. Employees engaged in storehouse and storage operations must be instructed in safety and fire protection regulations pertaining to these operations.

The division of fire is charged with the responsibility of periodically inspecting warehouses and for instructing employees therein in the techniques of fire prevention and protection.

- (b) Outdoor. Storage yards for items not requiring covered protection shall be protected by locked fenced enclosures to the extent necessary to protect the government's interest. Outside storage areas shall be prominently posted to clearly indicate that the property stored therein is government property. Entrance to such areas should be restricted to authorized personnel only.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 7.4.

**10.0144 General ledger control account-
Charging to projects benefited.**

The value of stores property acquired and disposed of shall be recorded in a general ledger control account for stores where the volume of work or other factors necessitate the establishment of a stores account. Unless otherwise directed by the head of each bureau or office, acquisitions of stores property described in the following subsections need not be recorded in a general ledger control account, but may be charged directly to the project benefited:

- (1) Materials and supplies purchased for immediate application on a specific project or job;
- (2) Materials and supplies purchased for single purposes, such as those procured against a bill of materials for a specific construction project, even though such materials may be stored for future use, consumption, or installation in such cases, however, card records showing quantity and descriptive information of the items involved shall be maintained to the extent necessary to ensure proper management and control of such inventories.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 8.1.

10.0145 Card records-Use.

The general ledger control account for stores shall be supported by detailed card records to adequately identify the units of property, the costs of which are charged to the stores account, provide a permanent record of the acquisition and disposition of all stores items and provide information needed for inventory control and management purposes. Use records shall be subject to both international external audit, and all entries made therein must be adequately supported by valid acquisition and disposal documents.

History: Rule 3-72, eff 17 Apr 78, 300 GASM § 8.2.

10.0146 Card records-Forms.

Property record cards and stock cards (see appendices 7, 10 and 14) or a modification thereof, shall be used for the purpose of carrying out the Provisions of 12.0344 and 12.0345.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 8.3.

10.0147 Reconciliation of records.

The total value of stores recorded on the stock card records shall be compared with the balance shown in the general ledger control accounts for stores at least once each year. Any differences disclosed as a result of this comparison shall be reconciled and adjusted in accordance with sound accounting practice is as necessary to bring the subsidiary records and control account monetary balances into complete agreement. The value of all property recorded on the property record cards shall be compared with the balance shown in the general ledger control account. Differences, if any, shall be reconciled.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 8.4.

10.0148 Issuing-Authorized employees.

To ensure that property will not be issued indiscriminately, the official having administrative jurisdiction of the property should designate in writing an essential number of employees to whom materials and supplies may be issued and/or to whom responsibility for equipment may be assigned.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 9.1.

**10.0149 Issuing-Documentation and receipts-
Transfers.**

All issues of property shall be adequately documented and a receipt obtained at the time the property is removed from the storehouse or other storage area.

- (a) Transfer of property, GAS form MT/MGT 20 (see Appendix 4) or a modification thereof may be used for the purpose of documenting transfers of property between offices or departments.
- (b) Issues from supply warehouses are handled by stub requisitions, GAS form 107 (see Appendix 13).

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 9.2.

**10.0150 Sale-Governing provisions-Public
notice.**

- (a) Contracts for the sale of government property are entered into by virtue of the provisions of this chapter and as may be specifically and expressly provided by law.
- (b). Property offered for sale will be brought to the attention of the buying public by direct mail, posting in public places, and by both free publicity and paid advertising in newspapers, on radio, and on television. The amount of paid advertising should be commensurate with the type and value of the property being sold.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.1.

10.0151 Sale publicity.

Every effort will be made to obtain maximum free publicity for sales from local newspapers, radio and television stations. Postal authorities will be contacted and requested to display posters and sale offerings on post office bulletin boards.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.2.

**10.0152 Descriptions of property-Bid deposit-
Award criteria.**

- (a) Invitation for bids, announcements and public notices, offering property for sale, will contain a full and complete description of the property, its location, condition and life span, and method of sale, whether by sealed bids, negotiation, or auction or spot bid.

- (b) Description of vehicular items, such as but not limited to automobiles, station wagons, ambulances, motor trucks, tractor trucks, and buses, will include the following: make of vehicle, year, series or model, manufacturer's serial number, type of vehicle and kind of body, number of cylinders, number of wheels driving, if other than standard, and manufacturer rated capacity.
- (c) Extremely important to the description of any property offered for sale is the portrayal of its true condition. Exact degrees of condition are matters of wide interpretation based on technical knowledge and individual opinion. The terminology contained in this chapter will govern. Some indication of the general condition of the property should be included if at all possible so that the bidder may have a basis upon which to estimate its value for future use. Condition codes should not be used in the description as these might prove quite meaningless to prospective bidders.
- (d) Awards normally will be made to the highest responsible and responsive bidder. In the event no awards are made for an item even though bids are received, the reasons for not making an award will be entered on the record of the sale.
- (e) When a bidder has not met the bid deposit requirement, as provided for in the invitations of bid, such bid normally will be considered nonresponsive, except under any of the following situations:
 - (1) The bid deposit is less than the amount required by the invitation to bid by an inconsequential amount and the rejection of the bid would not be in the best interest of the government;
 - (2) Only 1 bid has been received and it is considered to be adequate, and the bidder agrees to submit the required deposit;
 - (3) A bidder submits a bid deposit which is insufficient to cover all of the items for which he is in line for award. He should be awarded those items for which the bid deposit would have been adequate had only those items been bid upon; provided,

however, that such a partial award is not inconsistent with either the bid as submitted by the bidder or the terms and conditions of the invitations, such as all-or-none bid qualification.

- (f) In determining which of several items should be awarded, the greatest possible return to the government shall be the prime factor.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.3.

10.0153 Bid opening and abstract-Unit-basis bidding.

- (a) The official designated as the bid opening officer shall decide when the time set for bid opening has arrived and shall so declare to those present. All bids received prior to the time set for opening shall then be publicly opened and, when practicable, read aloud to the persons present, and be recorded. The official abstract of bids will contain as a minimum the following information:

- (1) Number of prospective bidders solicited;
- (2) Number of bids received;
- (3) Number of awards made;
- (4) Item number for which no award is made and the reason thereof;
- (5) Item number and statement of reasons for any award other than to highest bidder;
- (6) Information regarding whether a bid is submitted subject to condition, reservation, or qualification in any respect.

- (b) When bids are solicited on a unit basis, bidders will insert their unit prices and total prices in the space provided for each item. In the event the bidder quotes a total price on an item but fails to quote a unit price the government will determine the unit price by dividing the total price quoted by the quantity of the item set out in the invitation to bid. The unit price so determined will be used for the purpose of bid evaluation, award, and all phases of administration.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 4.

10.0154 Bid examination.

- (a) Examination of bids by interested persons shall be permitted during business hours if it does not unduly interfere with the conduct of government business.
- (b) Before making an award, the sales contract officer (the deputy division of property or his designee) shall carefully examine the highest bid received to assure that:

- (1) the bid is accompanied by the full amount of the required deposit, individual bid deposit bond, or reference to an annual bid deposit bond number;
- (2) there are no qualifications which would compromise the position of the government; and
- (3) the bid represents a fair price to the government and is commensurate with the market value of the property offered, but in no case less than the scrap value.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.5.

10.0155 Bid rejection-Abstract certification.

- (a) Bids may be rejected by the sales contract officer when bid prices offered are below the current market appraisals and the prices offered are not considered reasonable, and/or when it appears that there was a collusive attempt by bidders to hold down prices.
- (b) For each item which is withdrawn prior to bid opening and for each item for which there is no award made, entry will be made on the abstract of bids.
- (c) Although the abstract of bids is public information at all times after completion of the public opening of bids, the successful bidder for each item is not designated until the item has been circled and the abstract or document attached to the abstract has been certified as follows by the sales contract officer:

“I have made the awards or rejected the bids as indicated on this abstract, and the same countersigned by the Director of Material Management.”

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.6.

10.0156 Accounting of bid and sale proceeds.

Bid deposits and proceeds from sales shall, if not otherwise provided by law, be deposited in the Central Warehouse Fund, and authorized refunds, such as cash bid deposits and any overpayments, will be remitted therefrom.

History: Rule 3-78, eff Apr 78, 300 GASM § 10.7.

10.0157 Sales contracts-Notice of award-Storage charges.

- (a) The sales contract and notice of award shall be issued as promptly as possible after review and shall specify the final date or dates for payment and removal of the property.
- (b) In the event a purchaser fails to remove all property awarded within the specified removal period, the same shall be stored and daily storage charges thereon shall accrue at the rate of \$25.
- (c) In all instances when storage charges are assessed, payment will be made by the purchaser prior to the removal of the property unless otherwise authorized.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.2.

10.0158 Sales contract default-Failure to pay for or remove property.

- (a) When a purchaser fails to pay for or remove property or otherwise performed as required by the terms and conditions of sale he is considered to be in default; the consequences of this failure to properly perform his obligation under the contract may result in contract termination.
- (b) A termination for default for failure to pay and remove property form shall be issued for nonpayment or for nonremoval of property awarded. Ordinarily the purchaser will be allowed 20 days in which to cure the default on sales contract, including auction sales or spot bid.
- (c) The notice of default will advise the purchaser that in the event the default is cured prior to the expiration of the cure period, he will be required to pay any accrued storage charges for the period commencing with the day following the removal date specified in the award. The purchaser will

also be notified in the notice of default that in the event the default is not cured within the prescribed period he will lose all right, title, and interest in the property and that, upon expiration of the period prescribed for curing the default, a sum equal to 50% of the purchase price will be retained or collected by the government as liquidated damages.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.9.

10.0159 Auction.

- (a) At the hour, day, and location previously announced, the sale contracting officer will open the proceedings with an announcement concerning the conduct of the sale. All items will be offered item by item, in sequence, as they appear in the invitation and/or the public notice.
- (b) As each item is sold, the same should be forthwith recorded in an auction sale item record with pertinent information preprinted thereon. As a minimum, the same should show the hour, day, and location of the auction sale, the sale contracting officer and other officials and clerks of the department of material management, the name and address of the bidder and the amount bid. The successful bidder should be immediately informed with respect to his, obligation. Notices of award of contract will be mailed or otherwise furnished to the purchaser as soon as practicable after the sale.
- (c) In the event time permits, “no bid” or “rejected bid” passed items may be offered during the progress of the sale and may again be reoffered before the close of the sale, when deemed advisable and specific announcement is made to that effect at the time the item is passed.

History: Rule 3-78, eff 17 Apr 78, 300 GASM § 10.10.

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10.0201 Short title.

The rules codified in this chapter shall be known and cited as “American Samoa Procurement Rules.”

History: Rule 5-54, eff 11 Jul 81, (part).

10.0202 Authority.

The rules in this chapter are promulgated pursuant to the authority granted under Section 12.0214 A.S.C.A.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0203 Purpose.

The purpose of this chapter is to prescribe uniform rules necessary to fully implement Chapter 12.02 A.S.C.A.

History: Rule 5-84, eff 11 Jul 84, § (part).

10.0204 Definitions.

As used in this chapter, the words in this section shall have the following meanings unless the context otherwise requires:

- (a) “Chief procurement officer” means the head of the central procurement office of the government.
- (b) “Construction” means the purchases of building, altering, repairing, improving, or demolishing of a public structure or building, or public improvements commonly known as “capital

improvements”. It does not include the routine maintenance of existing structures, buildings, or public real property.

- (c) “Contract” means all types of agreements, regardless of what they may be called, for procurement.
- (d) “Contractor” means a person having a contract with an authorizing agency.
- (e) “Employee” means an individual receiving a salary from the government, including elective officials and nonsalaried individuals performing personal services for the government.
- (f) “Goods” means all property, including but not limited to equipment, materials, supplies, and other tangible personal property of any kind or nature, printing, insurance, leases of real and personal property, and sale or other disposal of real and personal property of any kind or nature.
- (g) “Government” means the American Samoa Government (ASG) which includes the executive, legislative, and judicial branches.
- (h) “Governmental body” means any department, office, agency, or other establishment or official of the government.
- (i) “Governor” means the Governor of American Samoa.
- (j) “Grant” means the furnishing by the government of assistance, whether financial or otherwise, to any person to support a program authorized by law.
- (k) “Invitation for bids” means all documents, whether attached or incorporated by reference, utilized for soliciting bids.
- (l) “Person” means an individual, sole proprietorship, partnership, joint venture, corporation, other unincorporated association, or a private legal entity.
- (m) “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 to be supervised by ASG employees.

- (n) “Rules” means rules which have been adopted under authority of this chapter in accordance with the provisions of the Administrative Procedure Act, 4.1001 A.S.C.A., et seq.
- (o) “Reasonable”, in reference to a bidder, means a person whose bid is equitable, fair, and suitable, and is not excessive or inappropriate in any material respect.
- (p) “Responsible”, in reference to a bidder, means a person who has the capability 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) “Services” 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.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0205 Requirement of good faith.

This chapter requires all parties involved in the negotiation, execution, performance, or administration of government contracts to act in good faith.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0206 Applicability.

- (a) Except as otherwise specified by law this chapter applies to every expenditure of public funds including federal assistance moneys and enterprise funds under any contract. This chapter also applies to the disposal of territorial goods.
- (b) This chapter does not apply to either grants by the government or contracts between the government and its bodies, political subdivisions, or other governments.

- (c) This chapter may not prevent any governmental body or political subdivision 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 procurement or violation of Article X of this chapter.
- (d) Where there is a discrepancy between the provisions of this chapter and the laws of the territory, the laws shall have precedence over these rules. These rules shall have precedence over executive orders or other executive branch issuance until this chapter is amended.

History: Rule 5-84, eff 11 Jul 84, (part).

II. PROCUREMENT ORGANIZATION

10.0210 Centralization of procurement authority.

Except as otherwise provided by law or executive order, all rights, powers, duties and authority' relating 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 a governmental body are transferred to the chief procurement officer.

10.0211 Chief procurement officer.

- (a) Location. The chief procurement officer shall head the office of procurement in the Department of Administrative Services. The office of procurement shall consist of a contract branch, a property management branch, and a policy and review branch.
- (b) Appointment and Qualifications. The Governor shall appoint and the Legislature shall confirm the chief procurement officer. The chief procurement officer shall meet the qualifications set forth in 12.0206 A.S.C.A.
- (c) Tenure and Removal. 'The chief procurement officer shall be a full time public official who serves at the Governor's pleasure.
- (d) Authority and Duties. The chief procurement officer shall serve as the central procurement official of the government and is authorized to:

- (1) Adopt operational procedures or rules governing the internal functions of his office.
- (2) Adopt and maintain rules for the government as necessary and appropriate for the implementation of Chapter 12.02 A.S.C.A., governing the procurement, management, control, and disposal of all construction, goods, and services procured by a governmental body. A separate manual of all rules and amendments to the rules shall be maintained by the chief procurement officer. The manual of rules shall be open to inspection and copying during normal business hours.
- (3) Except as otherwise specifically provided in. this chapter, in accordance with rules adopted:
 - (A) procure or supervise procurement of all construction, goods, and services needed by the government;
 - (B) exercise general supervision and control over all inventories of goods belonging to the government;
 - (C) sell, trade, or otherwise dispose of goods, surplus to the government, and serve as the head of the American Samoa agency for surplus property responsible for acquiring surplus federal property under the Federal Property and Administrative Services Act, as amended; and
 - (D) establish and maintain programs for the inspection, testing, and acceptance of construction, goods, and services.
- (4) Assist in providing technical assistance including training, necessary to ensure uniform implementation of the rules in this chapter.
- (5) Supervise the conduct of management reviews to monitor compliance with the rules in this chapter and initiate corrective action, as required.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0212 Decentralized procurement authority.

(a) Delegation of Authority. The chief procurement officer may delegate authority to execute and administer contracts to a procurement officer who is responsible for administering procurement on behalf of an agency or governmental body under the provisions of this chapter. The chief procurement officer may delegate authority to supervise and control inventories belonging to the government. The chief procurement officer may also suspend, limit, or revoke any delegation of authority made under the provisions of this subsection. Except as otherwise specifically provided in this chapter, the following officials are delegated authority to execute and administer contracts, and control inventories of government property under the conditions prescribed:

- (1) Director of Health. Execution and administration of purchase orders and contracts for routine procurement of drugs, medicines, and medical supplies and control of stores of medical supplies;
- (2) Director of Public Works. Execution and administration of architect-engineer and construction contracts and control of stores necessary for day-to-day maintenance requirements.

(b) Procurement Authority by Law or Executive Order.

- (1) Executive Director of the American Samoa Power Authority. Execution and administration of purchase orders and contracts for the Authority and control of stores necessary for day-to-day operations of the Authority pursuant to Chapter 15.01 A.S.C.A., et seq.;
- (2) Director of the Marine Railway Authority. Execution and administration of purchase orders and contracts for the Authority and control of stores necessary for day-to-day operation of the Authority pursuant to Executive Order No. 3-1978;
- (3) Director of the Department of Agriculture. Control of storage and distribution of fungicides, herbicides, insecticides,

weedicides, other agricultural chemicals, and animal feeds and fertilizers pursuant to 24.1201 A.S.C.A., et seq., and 24.2101 A.S.C.A., et seq.

(c) Notification of Delegations. Every official having procurement authority by delegation under this section or by law or executive order shall notify the chief procurement officer in writing of the name and title of any individual to whom that authority is delegated and the scope of the delegated authority.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0213 Coordination.

Under procedures adopted by the chief procurement officer, and except when a special evaluation or selection group is appointed by competent authority the CIP (Capital Improvement Project) and Procurement Review Committee shall review and approve the procurement of all construction and of goods and services which exceed \$25,000 prior to execution of contracts. The committee may also review contracts of lesser value at its discretion.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0214 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 chief procurement officer.
- (b) The Attorney General shall approve all government contracts for construction, leases of real property, other goods exceeding \$25,000, and services as to legal sufficiency prior to execution, regardless of the authority for execution and administration.

History: Rule 5-84, eff 11 Jul 84, (part); and Rule 14-84, eff 27 Dec 84, § 1; amd. 2022, Rule 2022-0003, eff 29 Nov 2022.

Amd: 2022, revised "\$10,000" to "\$25,000."

Editors Note: Under authority granted by A.S.C.A. § 4.1010 – Emergency Rules 2022-0001 (4/12/2022) and 2022-0002 (8/17/2022) were adopted. Said rules were permanently promulgated under Rule 2022-0003 (11/29/2022).

III. PROCUREMENT INITIATION

10.0220 Duties of the chief procurement officer.

The chief procurement officer shall develop, issue and maintain procedures governing the preparation and initiation of requisitions for the purchase of construction, goods, and services by the government.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0221 Duties of the Director of Program Planning and Budget Development.

The Director of Program Planning and Budget Development shall certify as to the availability of funding for all requisitions involving the expenditure of public funds, irrespective of source, within 48 hours after receipt of the requisition.

- (a) It shall be the policy of the government 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; and
 - (4) Insure adequate resources are available and sufficient time is allotted to insure delivery of needed goods and services.
- (b) The head of each governmental body initiating requisitions shall submit to the chief procurement officer, by 1 Oct 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.
- (c) The list of planned purchases shall be updated on a quarterly basis by the head of each governmental body initiating requisitions.

History: Rule 5-84, eff 11 Jul 84, (part).

IV. SOURCE SELECTION AND CONTRACT FORMULATION

10.0230 Definitions.

As used in this article, the following definitions shall apply:

- (a) “Bidding time” means the time between the issuance of a solicitation and the 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 a solicitation to describe the construction, goods, or services to be procured.
- (f) “Request for proposals” means all documents utilized for soliciting proposals under the negotiation method of procurement.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0231 Methods of source selection.

- (a) It is the policy of the government to conduct all purchases and procurement actions in a manner that provides maximum open and free competition.
- (b) Unless otherwise authorized by law, all government contracts shall be executed by competitive sealed bidding, in accordance with 10.0231(d), except as provided in:
 - (1) Subsection 10.0231(c)(1) – (2) for small purchases or micropurchases;
 - (2) Subsection 10.0231(e) for negotiation; or
 - (3) Subsection 10.0231(f) for emergency procurements.

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- (c) Simplified Purchases.
 - (1) Small Purchases. Any procurement with a dollar value of \$10,001 to \$25,000 shall be completed by soliciting at least three (3) quotes which may be done by the requesting department, the Office of Procurement, or both.
 - (2) Micropurchases. Any procurement with a dollar value of \$10,000 or less, shall be non-competitive and shall rotate vendors.
 - (3) Procurement requirements shall not be artificially divided so as to constitute a simplified purchase under this subsection and circumvent other source selection rules required under this section.
- (d) Competitive Sealed Bidding.
 - (1) Conditions for Use. Contracts shall be awarded by competitive sealed bidding except as provided in 10.0231(b). For this method to be used, the following conditions shall be present:
 - (A) A clear, complete, accurate, and realistic purchase description or specification for the good or service to be procured is available;
 - (B) The purchase description or specification does not contain unnecessarily restrictive requirements or features which may unduly limit the number of bidders;
 - (C) Two or more responsible bidders are willing and able to submit bids for the procurement; and
 - (D) The procurement requirements can be defined with sufficient accuracy so that a firmfixed-price contract can be executed, and selection of the successful bidder can be made principally on the basis of price.
 - (2) Invitation for Bids. An invitation for bids shall be issued and shall include:
 - (A) Invitation for bids number;
 - (B) Date of issuance;
 - (C) Name, address, and location of issuing office including room and building where bids must be submitted;
 - (D) Date, hour, and place of bid opening;
 - (E) 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 10.0243;
 - (F) Quantity of goods or services to be furnished;
 - (G) Time, place, and method of delivery or performance requirements;
 - (H) All requirements bidders must fulfill and other factors (if any) to be used in evaluating bids;
 - (I) Clauses required by 10.0250(d) or 10.0260;
 - (J) Bonding requirements for construction as required by 10.0250(b);
 - (K) Local preference evaluation factors when required by 10.0272;
 - (L) Optional Form (OF) 17, sealed bid label.
 - (3) Public Notice. 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 main lists; shall be published in a newspaper of general circulation in American Samoa, and foreign newspapers if required; and displayed at the office of the chief procurement officer the U.S. Post Office, and at other appropriate public places. The notice shall contain:
 - (A) Invitation for bids number;

- (B) Adequate description of the types and quantities of goods and services to be furnished;
 - (C) Information on how to obtain copies of the invitation for bid, including any charges as required by 10.0250(a).
- (4) Bidding Time. A reasonable time for prospective bidders to prepare and submit bids shall be allowed in all invitations, consistent with the needs of the government. A bidding time of 30 calendar days shall be provided, unless the chief procurement officer determines a shorter period is reasonable and necessary.
- (5) Bidders Mailing List. 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.
- (6) Bid Receipt. Bids, where receive 1 at the location specified in the invitation for bids, 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 in the envelope and the person who opened the bid shall write his signature and title on the envelope and deliver it to the chief procurement officer. No information contained in the bid shall be closed prior to bid opening.
- (7) Bid Opening. 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 or more witnesses from the government. 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.
- (8) Recording of Bids. The invitation for bids number, bid opening date, names and addresses of bidders, prices bid, and bid evaluation as may be required by 10.0272, 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 official shall certify the accuracy of the record.
- (9) Bid Acceptance and Evaluation. Bids shall be unconditionally accepted without alteration or correction except as authorized under paragraph (0) or (11) of this subsection. Bids shall be rated 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.
- (10) Bid Retention. A bid may be rejected for any of the following reasons, as determined in writing by the chief procurement officer:
- (A) Failure to conform to essential requirements of the invitation for bids such as specifications or time of delivery;
 - (B) Imposition of conditions or restrictions in the bid which modify requirements of the invitation or limit the bidders liability to the government. For example, bids shall be rejected in which the bidder:
 - (I) Protects against future changes in conditions, such as increased costs;
 - (II) Fails to state a price and indicates that price shall be the price in effect at time of delivery;
 - (III) States a price but qualifies it as subject to price in effect at time of delivery; or
 - (IV) Limits the rights of the government 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;

(C) Unreasonableness as to price;

(D) A low bid from a nonresponsible bidder as determined in accordance with 10.0233; (E) Failure to furnish a bid guarantee as required by 10.0250(b).

(11) Correction or Withdrawal of Bids; Cancellation of Awards. 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 government or fair competition shall be permitted. A suspected bid mistake requires the government 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 an error the government shall only permit correction of the bid or withdrawal of the bid in accordance with subparagraph (A) or (B) below.

(A) Correction of Bids. Correction of bid shall only be permitted when:

(I) 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

(II) 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.

(B) Withdrawal of Bids. 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.

(C) Cancellation of Awards. Cancellation of awards or contracts shall only be permitted when:

(I) Evidence as to the existence of the mistake is not discovered until after award;

(II) There exists no clear and convincing evidence to support the bid intended; and

(III) Performance of the contract at the award price would be unconscionable.

(12) Award. 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.

(13) Negotiation After Opening of Bids. After the opening of bids, if all bids exceed available funds as certified under 10.0221, and the bid of the lowest responsive and responsible bidder does not exceed those funds by more than 5%, and time and economic considerations preclude

resolicitation of the work at a reduced scope the chief procurement 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 chief procurement officer and included in the contract file.

(e) Negotiation.

(1) Competitive.

(A) Conditions for Use. Contracts may be awarded by competitive negotiation when the chief procurement officer determines in writing that the use of competitive sealed bidding under 12.0231(d) is not practicable because of the nature of the goods or services to be procured.

(B) Requests for Proposals. A request for proposals shall be issued and shall include:

- (I) Request for proposal number;
- (II) Date of issuance;
- (III) Name, address, and location of issuing office including address for submission of proposals;
- (IV) Date for submission of proposals;
- (V) Description of the required goods or services to be procured;
- (VI) Evaluation criteria to be used by the government in evaluating proposals on a technical and cost basis. The relative importance of the evaluation criteria shall be stated so all offerors clearly understand the basis for award;
- (VII) Instructions for offerors to use in submitting technical and

cost proposals, including number of copies required;

(VIII) Quantity of goods or services to be furnished;

(IX) Time, place, and method of delivery or performance requirements;

(X) Clauses required by 10.0260.

(C) Public Notice. Public notice shall be made in accordance with 10.0231(d) (3).

(D) Proposal Times. Proposal times shall conform to the requirements in 10.0231(d) (4).

(E) Offerors Mailing List. A list of prospective offerors shall be prepared in accordance with the requirements of 10.0231(d) (5).

(F) Receipt of Proposals. Proposals shall be opened and used only by government personnel authorized to participate in evaluation. No information contained in a proposal shall be disclosed to the public until after contract award. Proposals shall be protected so as to avoid disclosure of contents to competing offerors.

(G) Evaluation. Proposals shall be evaluated by the government in accordance with the evaluation criteria contained 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 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.

(H) Discussions. Discussions shall be conducted with those responsible offerors whose proposals are determined by the 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 that no information derived from competing offerors' proposals is disclosed. All offerors with whom discussions are conducted shall be afforded the same time period to revise their proposal and submit a best and final offer to the government based on the discussions.

- (I) Final Offers. Best and final offers received from offerors shall be evaluated by the government using the evaluation criteria contained in the request for proposals and the results shall be documented and included in the contract file,
 - (J) Award. Award shall be made to the responsible offeror whose proposal is determined in writing by the chief procurement officer to be most advantageous to the government considering price and the evaluation criteria contained in the request for proposal. Unsuccessful offerors shall be promptly notified.
- (2) Noncompetitive.
- (A) Conditions for Use. Contracts may be awarded without competition when the chief procurement officer determines in writing that award of a contract is infeasible 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:

- (I) The unique capabilities of the source that are required, why they are required, and the degree of consideration given to other sources;
 - (II) The facilities or equipment of the source that are required, why they are required and if they are unavailable from other source'
 - (III) Whether the work is a continuation of 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;
 - (IV) Whether drawings or specifications suitable for competitive sealed bidding or competitive negotiation are available. If unavailable, explain why and the time and expense required to develop them;
 - (V) Other sources given consideration and specific reasons why they lack the qualifications required for the procurement.
- (f) Emergency Procurement.
- (1) Conditions for Use. Notwithstanding any other provisions of this chapter, the Governor may make or authorize a governmental body to make an emergency procurement when there exists a threat to public health, welfare, or safety under emergency conditions as defined under 26.0105(d) A.S.C.A. An emergency procurement must be as competitive as practicable under the circumstances.
 - (2) 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 Governor, before contract award. The determination shall be included in the contract file.

History: Rule 5-8-4, eff 11 Jul 84, (part); Rule 2022-0003, eff 29 Nov 2022.

Amd: 2022, subsection (c), single paragraph split into subsections (1)-(3); subsection (1) added \$10,001 to \$25,000 and “shall be completed by soliciting at least three (3) quotes which may be done by the requesting department, the Office of Procurement, or both”; subsection (2) “Micropurchases. Any procurement with a dollar value of \$10,000 or less, shall be non-competitive and shall rotate vendors.”; subsection (3) “Procurement requirements shall not be artificially divided so as to constitute a simplified purchase under this subsection and circumvent other source selection rules required under this section.”

10.0232 Cancellation of solicitations.

An invitation for bids or request for proposals may be cancelled, and any or all bids or proposals may be rejected, when such action is determined in writing by the chief procurement officer to be in the best interest of the government based on:

- (a) Inadequate or ambiguous specifications contained in the solicitation;
- (b) Specifications which have been revised;
- (c) Goods or services being procured which are no longer required;
- (d) Inadequate consideration given to all factors of cost to the government in the solicitation;
- (e) Bids or proposals received indicate that the needs of the government can be satisfied by a less expensive good or service;
- (f) All otherwise acceptable bids or proposals received are at unreasonable prices; or
- (g) Bids were collusive (see 10.0292(i)).

History: Rule 5-84, eff 11 Jul 84, (part).

10.0233 Qualifications and duties.

- (a) Responsibility of Bidders and Offerors. Awards shall be made only to responsible contractors.
 - (1) Responsibility Factors. To be determined responsible, a prospective contractor must:

- (A) Have adequate financial resources to perform the contract, or the ability to obtain them;
- (B) Be able to comply with the required delivery or performance schedule;
- (C) Have a satisfactory performance record;
- (D) Have a satisfactory record of integrity and business ethics;
- (E) Have the necessary organization, experience, and skills (or the ability to obtain them), required to successfully perform the contract;
- (F) Have the necessary production, construction, and technical equipment and facilities (or the ability to obtain them); and
- (G) Be otherwise qualified and eligible to receive an award under applicable laws and rules.

(2) Obtaining Information. Prior to award, the government official delegated authority to execute and administer a contract shall obtain information from the bidder or offeror necessary to make a determination of responsibility using the factors in paragraph (1) of this subsection. 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 nonresponsibility determination under paragraph (4) of this subsection. Information furnished by a bidder or offeror pursuant to this paragraph may not be disclosed outside of the office of the chief procurement officer or the purchasing agency without prior written consent by the bidder or offeror.

(3) Responsibility Determination. The signing of a contract shall constitute a determination that the prospective contractor is responsible.

(4) Nonresponsibility 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 nonresponsible, a written determination shall be signed by the government official delegated authority to execute the contract and shall state the basis for the determination. The determination shall be placed in the contract file.

(b) Prequalification. Prospective suppliers of goods or services may be prequalified for particular types of construction, goods, and services when determined necessary by the chief procurement officer. Opportunity for qualification before solicitation shall be afforded to all suppliers. Solicitation mailing lists of potential contractors shall include but shall not be limited to prequalified suppliers.

History:- Rule 5-84, eff 11 Jul 84, (part).

10.0234 Types of contracts.

- (a) Use of a cost-plus-a-percentage-of-cost and percentage of construction cost method of contracting are prohibited.
- (b) Normally, a firm-fixed-price contract shall be used unless use of a cost reimbursement contract is justified under subsection (c) of this section.
- (c) A cost reimbursement contract may be used when the 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 the government for contingencies that never occur; or
 - (3) Use of a cost reimbursement contract is likely to be less costly to the government than any other type due to the nature of the work to be performed under the contract.

(d) The chief procurement officer shall develop, issue, and maintain procedures for the preparation of contract documents.

History: Rule 5.84, eff 11 Jul 84, (part).

V. **SPECIFICATIONS**

10.0240 Definitions.

As used in this article, the following definition shall apply:

(a) “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 5-84, eff 11 Jul 84, (part).

10.0241 Duties of the chief procurement officer.

- (a) The chief procurement officer shall be responsible for monitoring the use of specifications for construction, goods, and services to be procured.
- (b) The chief procurement officer may delegate this responsibility in writing to an official who has been delegated authority to execute and administer contracts.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0242 Maximum practicable competition.

All specifications shall be written to promote overall economy for the purposes intended, encourage maximum competition in satisfying the government’s minimum needs, and shall not be unduly restrictive of competition.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0243 Use of specifications.

(a) Specifications shall not be written so as to specify a particular product, or a particular feature of a product peculiar to one manufacturer unless that particular product or feature is essential to the government’s requirements and products of other companies lacking the particular feature would not meet the minimum needs of the government.

- (b) Specifications shall, whenever practicable, include a description of 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 10.0244 as a means to define the performance or other salient characteristics of the requirement.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0244 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 the government’s requirements without referring to a particular product.
- (b) “Brand name or equal” descriptions 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 the government. Such descriptions shall include:
 - (1) Complete identification of the item required;
 - (2) Applicable model, make, or catalog number for each brand name referenced, and identity 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 the government to determine that the offered product fully meets the salient characteristic requirements listed in the “brand name or equal” description.

History: Rule 5-84, eff 13 Jul 84, (part).

10.0245 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 5-84, eff 11 Jul 84, (part).

VI. PROCUREMENT OF CONSTRUCTION AND ARCHITECT-ENGINEER SERVICES

10.0250 Construction.

- (a) Invitation for Bids.
 - (1) Deposit. The 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.
 - (2) Contents. The invitation for bids shall be prepared in accordance with 10.0231(d) (2). In addition, the following additional items shall be included in the form prescribed by the chief procurement officer:
 - (A) Notice to Bidders. General information regarding project information;
 - (B) Instructions to Bidders. Information on the preparation of bids, bid security requirements (10.0250(b)), and forms and certifications to be submitted with the bid;
 - (C) General Conditions. Standard contract clauses governing the performance of work;
 - (D) Special Conditions. Special contract clauses depending on the nature and dollar amount of the work to be performed;
 - (E) Technical Specifications. Specifications governing the technical aspects of the work to be performed;

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(F) Local Bidder Preference. Evaluation of local bidder preference as required under 10.0272.

(b) Bid security.

- (1) Requirement. Bid security shall be required for all competitive sealed bidding construction contracts where performance and contract bonds are required. Bid security shall be on a bid bond (GSA Standard Form 24), in cash, by certified check, cashier's check, or other form acceptable to the government. The surety company shall hold a certificate of authority from the U.S. Secretary of the Treasury as an acceptable surety, or other surety acceptable to the government.
- (2) Amount. Bid security shall be in an amount equal to 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.
- (3) Rejection of Bid. Failure to furnish bid security, when required by the invitation, shall result in rejection of the bid in accordance with 10.0231(d) (10) (E).

(c) Contract, Performance, Payment and Other Bonds.

- (1) Contract Bond. A contract bond is required in cash, certified check, cashier's check, or with sureties certified by the government on GSA Form PUB/WKS-49 or other similar form satisfactory to the government when the amount of the contract does not exceed \$100,000.
- (2) Performance and Payment Bonds. A performance bond and payment bond are required in cash, certified check, cashier's check, or with sureties certified by the government on GSA Form 25 and 25A or other similar form satisfactory to the government when the contract exceeds \$100,000.
- (3) Amount. The contract, performance, and payment bonds shall be in an amount

sufficient to protect the government's interest as determined by the chief procurement officer.

- (4) Other Bonds. Other bonds, such as labor and materials bonds, may be required in order to protect the interests of the government. Such bonds shall be required as determined by the chief procurement officer or other government official delegated authority to execute and administer construction contracts.

(d) Required Contract Provisions. The following causes shall be included in all construction contracts as prescribed:

- (1) For contracts exceeding \$10,000, "Termination for convenience" (Appendix A);
- (2) For contracts exceeding \$10,000, "Termination for default" (Appendix 131);
- (3) For contracts exceeding \$ 10,000, "Equal Opportunity" (Appendix C);
- (4) "Anti-Kickback Statute" (Appendix D);
- (5) When required by federal grant program legislation and the contract exceeds \$2,000, "Davis Bacon Act" (Appendix F);
- (6) Where applicable for contracts in excess of \$2,000, "Contract Work Hours and Safety Standards Act" (Appendix F);
- (7) For contracts over \$100,000, "Clean Air and Water" (Appendix G) unless this requirement has been waived by EPA;
- (8) Prohibition against gratuities and kickbacks as required by 10.0292(f);
- (9) Prohibition against contingent fees as required by 10.0292(g);
- (10) Prohibition against collusion as required by 10.0292(i).

(e) Fiscal Responsibility. Every contract modification, change order, or contract price adjustment under a construction contract shall be subject to prior written certification by the fiscal officer of the entity responsible for funding the

project or the contract, 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 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 therefor, 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 contract price which the contractor has reasonably relied upon, it shall be presumed that there has been compliance with the provisions of this subsection.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0251 Architect-engineer services.

- (a) Applicability. Architect-engineer services shall be procured as provided in this section except as authorized by 10.0231(c) (small purchases), 10.0231(d)(2) (noncompetitive negotiation) or 10.0231(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 chief procurement officer or other official delegated authority to execute and administer architect-engineer contracts shall maintain files of current statements of qualifications of 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 services required.

- (d) Negotiation. The chief procurement officer or other official delegated authority shall negotiate a contract with the highest qualified architect-engineer firm at a price determined to be fair and reasonable to the government. 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, negotiations shall be terminated and negotiations shall be undertaken with the third highest qualified firm. If a fair and reasonable price cannot be negotiated with any of the selected firms, the chief procurement officer 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.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0252 Duties of the chief procurement officer.

The chief procurement officer may promulgate additional contract provisions as are required for construction or architect-engineer contracts.

History: Rule 5-84, eff 11 Jul 84, (part).

VII. PROCUREMENT OF GOODS AND SERVICES

10.0260 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);
- (d) For contracts in excess of \$2,500 which involve employment of mechanics or laborers, “Contract Work Hours and Safety Standards Act” (Appendix F);
- (e) For negotiated contracts, “Examination of Records” (Appendix I);
- (f) For contracts over \$100,000. “Clean Air and Water” (Appendix G);
- (g) For contracts involving research, development, experimental or demonstration work, “Patents” (Appendix J);
- (h) Prohibition against gratuities and kickbacks as required by 10.0260(f): (i) Prohibition against contingent fees as required by 10.0260(g);
- (j) Prohibition against collusion as required by 10.0260(i).

History: Rule 5-84, eff 11 Jul 84, (part).

10.0261 Duties of the chief procurement officer.

The chief procurement officer may promulgate additional contract provisions as are required for contracts for goods and services. The 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 the government’s interest.

History: Rule 5-84, eff 11 Jul 84, (part)

VIII. SOCIOECONOMIC PROGRAMS

10.0270 Policy.

It shall be the policy of the government to use its procurement rules to promote local business investment, activity, and competitiveness with other nonlocal businesses 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. The government shall encourage economic activities and business

development to the maximum extent feasible without compromising effective and efficient government procurement practices including competition.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0271 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:
 - (1) Has a valid American Samoa business license and, if required, a foreign corporation permit to transact business in American Samoa;
 - (2) has its principal place of business in American Samoa;
 - (3) Has owned, operated, or maintained an office, store, warehouse, or other facility in American Samoa for at least six months;
 - (4) Has, or has the ability to obtain, necessary technical support services, as may be required, for timely installation, maintenance, warranty, and repair of the 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 A.S.C.A., or a partnership, joint venture, or other unincorporated association which is wholly owned by those persons, or a corporation which is 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 subsections (a) and (b) of this section.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0272 Local bidder preference and evaluation.

(a) Construction Procurements.

- (1) For construction procurements where the contract value is estimated by the government 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.
- (2) For all construction procurements where the contract value is estimated by the government 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:

Estimated Value	Add-on Percentage
\$50,001 to \$100,000	10%
\$100,001 to \$200,000	\$10,000 plus 5% of the amount in excess of \$100,000
More than \$200,000	\$15,000

(b) Procurement of Goods and Services

- (1) For all procurements of goods and services (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 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:

Estimated Value	Add-on Percentage
Up to \$10,000	25%
\$10,001 to \$50,000	\$2500 plus 12% of the amount in excess of \$10,000
\$50,001 to \$100,000	\$7300 plus 10% of the amount in excess of \$50,000
\$100,001 to \$200,000	\$12,300 plus 5% of the amount in excess of \$100,000
More than \$200,000	\$17,300

- (c) If, after the addition of the applicable add-on percentage amount according to subsection (a) or (b) of this section, the bid submitted by the lowest responsive, responsible, and reasonable local bidder is equal to or less than the evaluated bid (amount of bid plus add-on percentage of the bid) of the lowest responsive, responsible, and reasonable off-island bidder, then the local bidder shall be awarded the contract.
- (d) Procurement requirements may not be artificially divided or combined so as to circumvent the provisions of this section.
- (e) The Governor 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 the government generally, for a period or periods not exceeding 18 months in total. The preferences suspended or reduced must be fully restored after 18 months unless permanent modifications are proposed to the Legislature. Suspension or reduction shall be adopted under the Administrative Procedure Act, 4.1001 A.S.C.A., et seq.

*History: Rule 5-84 eff 11 Jul 84. (part)
Amendment: Amd: 25 Mar 2022 (chart updated)*

IX. CONTRACT ADMINISTRATION

10.0280 Responsibilities.

The chief procurement officer and other officials delegated authority to award and administer government contracts shall be responsible for monitoring contract performance in accordance with the terms, conditions and specifications of the contract.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0281 Contract file documentation.

For each contract awarded, an official contract file shall be established and contain the following information:

- (a) Purchase requisition;
- (b) Public notice;
- (c) Bid or offeror’s mailing list;

- (d) Invitation for bids or request for proposals;
- (e) Bid abstract or record;
- (f) Determination of nonresponsibility, when applicable;
- (g) Evaluation results (negotiated procurement)
- (h) Notice of award to unsuccessful bidders or offerors;
- (i) Contract;
- (j) Noncompetitive determination (when applicable);
- (k) Emergency procurement determination (when applicable);
- (l) Cost-reimbursement contract determination (when applicable);
- (m) Basis for cost or price.

History: Rule 5-84. eff 11 Jul 84, (part).

10.0282 Disputes and appeals.

- (a) Definition. “Dispute” means any disagreement between contractors or potential contractors and the government regarding a procurement officer’s decision 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 procurement officer making the decision. The procurement officer shall acknowledge receipt of the dispute within 5 working days of receipt and shall render a final decision within 30 working days after receipt of the dispute.
- (c) Appeals. Appeals of a procurement officer’s final decision in a dispute may be made within 60 days of the date of the decision, provided such appeal is submitted in writing to the Governor. The Governor shall appoint a board of at least three persons knowledgeable of procurement to review such appeals and recommend appropriate action to the Governor. 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, 4.1025 A.S.C.A., 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 5-84, eff 11 Jul 84, (part).

X. ETHICAL CONDUCT STANDARDS FOR GOVERNMENT EMPLOYEES AND CONTRACTORS

10.0290 Policy.

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.

History: Rule 5-84. eff 11 Jul 84, (part).

10.0291 Definitions.

As used in this article, the following definitions shall apply:

- (a) “Confidential information” means any information which is available to an employee only because of the employee’s status as an employee of this government 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:

- (1) 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
 - (2) 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, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
- (f) “Immediate family” means a spouse, children, parents, brothers and sisters.

History: Rule 5-84, eff 11 Jul 84. (part).

10.0292 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 standard, 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 benefit from any government contract with a business in which the employee has a financial interest shall report such benefit to the 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.

- (1) 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;
 - (A) The employee or any member of the employee’s immediate family has a financial interest pertaining to the procurement;
 - (B) A business or organization in which the employee, or any member of the employee’s immediate family, has a financial interest pertaining to the procurement; or
 - (C) Any other person business, or organization with whom the employee or any member of the employee’s immediate family is negotiating or has an arrangement concerning prospective employment is involved in the procurement.
 - (2) 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.
- (e) 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.
- (f) Prohibition Against Gratuities and Kickbacks.
 - (1) Gratuities. 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 of any part of a program requirement or a purchase request, influencing the content of

any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling, determination, claim or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- (2) Kickbacks. 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 under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order,
- (3) Contract Clause. The prohibition against gratuities and kickbacks prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefor.

(g) Prohibition Against Contingent Fees.

- (1) Contingent Fees. It shall be a breach of ethical standards for a person to be retained, or to retain a person, to solicit or secure a government 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.
- (2) Representation of Contractor. Every person, before being awarded a government 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.
- (3) Contract Clause. The representation prescribed in this subsection shall be conspicuously set forth in every contract and solicitation there for.

(h) Restrictions on Employment.

- (1) 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 the governmental body by whom the employee is employed.
- (2) Restrictions on Former Employees in Matters Connected with their Former Duties.
 - (A) Permanent Disqualification of Former Employee Personally Involved in a Particular Matter. It shall be a breach of ethical standards for any former employee knowingly to act as a principal, or as an agent for anyone other than the government in connection with any:
 - (i) Judicial or other proceeding, application, request for a ruling, or other determination;
 - (ii) Contract;
 - (iii) Claim; or
 - (iv) 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 the government is a party or has a direct and substantial interest.
 - (B) One Year Representation Restriction Regarding Matters for which a Former Employee was Officially Responsible. It shall be a breach of ethical standards for any former employee, within twelve months after cessation of the former employee's official responsibility, knowingly to act as a principal, or as an agent for anyone other than the government, in connection with any:

- (i) Judicial or other proceeding, application, request for a ruling, or other determination;
 - (ii) Contract;
 - (iii) Claim; or
 - (iv) Charge or controversy, in matters which were within the former employee's official responsibility, where the government is a party or has a direct or substantial interest.
- (3) 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 the government, in connection with any:
- (A) Judicial or other proceeding, application, request for a ruling, or other determination;
 - (B) Contract;
 - (C) Claim; or
 - (D) 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 the government is a party or has a direct and substantial interest.
- (4) Selling to the government 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 the government 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 of a sale although the actual contract therefor 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 this government, nor shall a former employee be precluded from serving as a consultant to this government.

- (i) Collusion Between Bidders/offerors.
 - (1) Policy. Collusion or secret agreement between bidders or offerors for the purpose of securing an advantage to the bidders or offerors as 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 bidders/offerors by reason of collusion or secret agreement among the bidders/offerors to the disadvantage of the government.
 - (2) Representation of Contractor. Every person, before being awarded a government 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.
 - (3) Contract Clause. The representation prescribed in this subsection shall be conspicuously set forth in every contract and solicitation therefor.

(j) Prohibition Against Employee Use and Contractor Acceptance of Purchase Requisitions.

- (1) Policy. Only valid purchase orders and contracts awarded pursuant to this chapter constitute legal and binding documents between the government and its contractors. The government shall not make payment to a contractor who delivered goods or services as a result of receipt and acceptance of a purchase requisition, unless such purchase was authorized by this chapter.
- (2) Notice. All purchase requisitions used by the government shall contain a prominent notice on the face of the requisition form which sets forth the prohibition in this subsection.
- (3) Employee Liability. Unless otherwise authorized by this chapter, any employee who uses or attempts to use a purchase requisition to obtain goods or services directly, from a contractor without first obtaining a valid purchase order or contract may be held personally liable and responsible for the amount of the goods and services.
- (4) Ratification. Employee purchases for the government without the use of a valid purchase order or contract are improper and illegal. Such actions may be ratified in exceptional circumstances by the chief procurement officer when such action is determined to be in the interest of the government.

History: Rule 5-84, eff 11 Jul 84. (part).

10.0293 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 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 government contract in addition to other penalties prescribed by law.

- (c) All proceedings 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 A.S.C.A., et seq., and the rules.

History: Rule 5-84, eff 11 Jul 84, (part).

10.0294 Criminal penalties.

- (a) Except as otherwise provided in this section, a violation of a provision of this chapter is punishable as a class B misdemeanor.
- (b) A person who gives or receives anything of value for the purpose of securing or influencing the award of a contract subject to the provisions of this chapter, is upon conviction, guilty of a class C felony.

History: Rule 5-84, eff 11 Jul 84. (part).

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 finding 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 ails 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, 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 officer, the procurement 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) Completion. 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 or 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 any one 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 contractor shall comply with the Cope-land “Anti-Kick Back” Act (1 8 USC 874) as supplemented in Department of Labor Regulations (29 CFR Part 3).

TITLE 18, U.S.C., Section 874:

“874. Kick-Back from public works employees; Whoever by force, intimidation, or threat of procuring dismissal from employment, or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States, to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined not more than \$5,000.00 or imprisoned not more than five years, or both.”

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:

(1) 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 duct 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.

- (ii) 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.
- (iii) 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.

- (iv) 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.

- (2) 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.

- (3) 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.
- (ii) 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) (1) (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.

(4) 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.

- (ii) Trainees. Except as provided in 29 CFR 55 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 h program, the registration of the

trainees, and the ratios and wage rates prescribed in that program in the event the Bureau of Apprenticeship and 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.

(iii) 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.

- (5) 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.
- (6) Subcontracts. The contractor will insert in any subcontracts the clauses contained in 29 CFR 5.5(a) (1) 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.
- (7) 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 pen-nit 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 (I), 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 (I).
- (3) 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).
- (4) 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 ACT 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 involves 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 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 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 airtid save the government and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost arid 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 5-4. eff 11 Jul 84, (part).

APPENDIX D

END OF TITLE 10 - PUBLIC DOCUMENTS

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

Chapters:

- 01 Health Care Planning
- 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

Sections:

- 11.0101 Federally funded programs and projects-ASHPDA consideration.
- 11.0102 Authority-Review procedures and criteria.
- 11.0103 Purpose.
- 11.0104 ASHPDA dual role-American Samoa Plan for Health.
- 11.0105 Review required when.
- 11.0106 Reviews. Review not required when-Five-year continuation
- 11.0107 ASHCC review.
- 11.0108 Reports on proposal development.
- 11.0109 Letter of intent to file federal funds application.
- 11.0110 Presubmission conference.
- 11.0111 Applications-Submission.
- 11.0112 Application is-Noncompeting continuation grants.
- 11.0113 Applications-Confidential or proprietary information.
- 11.0114 Applications-Allotment fund proposals.
- 11.0115 Notice of review-Deadline-Content.
- 11.0116 Notice of review-Medium.
- 11.0117 Dead Lines. Time allowed for review-Submission is near funding
- 11.0118 Plan implementation committee comment.
- 11.0119 Coordination with certificate of need reviews.
- 11.0120 Notice of review findings.

- 11.0121 Appraisal of applicants and others-Reports of reviews-Public access.
- 11.0122 Public hearing.
- 11.0123 Scope of review-Substantial conformance principle-Criteria use.
- 11.0124 Criteria.
- 11.0125 Funding despite disapproval-Review requirement.
- 11.0126 Funding despite disapproval-Review requests.
- 11.0127 Funding despite disapproval-Explanation.
- 11.0128 Rules amendment-Notice.
- 11.0129 Rules amendment-Comment period.
- 11.0130 Rules amendment-Distribution of proposals.
- 11.0131 Rules amendment-Adoption.
- 11.0132 Rules amendment-Distribution after adoption.
- 11.0133 Appendix A noncode status.

- Appendix A
- Appendix B
- Appendix C
- Appendix D

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.

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).

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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.

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

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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 (projects funded under allot.)		X	
X			
Center for Disease Control (Continued)			
13.266 Childhood lead-based paint poisoning projects	X	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			

- 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:
 - (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;

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

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- (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),
 - (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.

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 _____

TITLE 11 – CHAPTER 02 – NEED FOR HEALTH FACILITIES & SERVICES

Sections:

- 11.0201 Purpose.
- 11.0202 Authority.
- 11.0203 Short title.
- 11.0204 Applicability.
- 11.0205 Certificate of need required when.
- 11.0206 Application submits to jurisdiction-Applicability rulings.
- 11.0207 Definitions.
- 11.0208 Time period computation.
- 11.0209 Forms, applications, and procedures.
- 11.0210 Communications between applicant and staff or review board.
- 11.0211 Public records on applications.
- 11.0212 Public records designated-Status appraisal and information providing.
- 11.0213 Enforcing agency appraisal.
- 11.0214 Annual reports.
- 11.0215 ASHPDA-Duties.
- 11.0216 ASIIPDA-Location-Address-Telephone number.
- 11.0217 Review board-Composition-Chairman-Terms.

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 _____

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11.0218	Review board-Function- Procedure generally.	11.0252	Preliminary action-Permitted- Procedure.
11.0219	Staff activity restrictions.	11.0253	Preliminary action-Alternatives.
11.0220	Notice of intent-Required-When filed.	11.0254	Dismissal-Permitted.
11.0221	Notice of intent-Title-Content.	11.0255	Dismissal-Grounds.
11.0222	Notice of intent-Acknowledgment- Providing forms and information- Response to requests.	11.0236	Dismissal-Procedures.
11.0223	Technical assistance.	11.0257	Final determination deadline.
11.0224	Preapplication conferences.	11.0258	Objective in determination.
11.0225	Application-Required-Number of copies.	11.0259	Findings required.
11.0226	Application-Standard and emergency.	11.0260	Determination criteria-Consideration.
11.0227	Application-Emergency review justification.	11.0261	Determination criteria-Services and equipment.
11.0228	Application-Form-Content.	11.0262	Determination criteria-New facilities for new services.
11.0229	Application-Evaluation-Requirement restrictions.	11.0263	Determination criteria-New facilities for existing services.
11.0230	Application-Justification responsibility- Supporting evidence.	11.0264	Applicant demonstration of need- Determination data resources.
11.0231	Application-Emergency form.	11.0265	Issuance of certificate-Director action contrary to board.
11.0232	Application-Amendment or addition.	11.0266	Term of determination-Changes to projects.
11.0233	Application-Withdrawal.	11.0267	Notice of review board action-Effective date.
11.0234	Public comment, notice, and document access.	11.0268	Revocation.
11.0235	Notice of beginning of review.	11.0269	Appeals board review-Complaints to board.
11.0236	Public hearings-When ordered-Request deadline.	11.0270	Agency review-Appeals board or judicial remedy.
11.0237	Public hearings-For reconsideration of agency finding.	11.0271	Rulemaking-Applicability of provisions.
11.0238	Public hearings-Notice.	11.0272	Rulemaking-Notice of proposal.
11.0239	Public hearings-When held-Place.	11.0273	Rulemaking-Public hearing.
11.0240	Public hearings-Conduct.	11.0274	Rulemaking-Distribution of proposals- Comments.
11.0241	Public hearings-Summaries- Applicant comments Reconsideration findings.	11.0275	Reports-Who must submit.
11.0242	Staff reports-Required when.	11.0276	Reports-Notice of requirement,
11.0243	Staff reports-Content.	Exhibit 1	
11.0244	Staff reports-Filing and distribution- Contents.	Exhibit 2	
11.0245	Advocacy by applicant.	Exhibit 3	
11.0246	Deadline for agency action and documentation-Failure to act.	Exhibit 4	
11.0247	Prerequisites for agency action.	Exhibit 5	
11.0248	Review board meetings- Announcement and public nature-Presiding officer.		
11.0249	Review board meetings-Notice and transmittal of material to members.		
11.0250	Review procedure.		
11.0251	Official record of review Board action.		

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.
- (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 S 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 fails 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, Det. 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, Det. 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, Det. 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, Det. 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, Det. 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, Det. 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, Del. 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. § 233.

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;
- (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, Det. 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 tile 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

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Dermatology	Ambulance service affiliated with a health care facility
Diabetes	
Endocrinology	(2) Emergency room services.
Eye, ear, nose, throat	(3) Diagnostic radiology:
Family planning	Diagnostic X-ray
Genito-urinary	Cinefluorography
Glaucoma	Ventriculography
Gynecology	Angia-cardiology.
Hypertension	(4) Computerized axial tomography.
Inoculation	(5) Nuclear medicine.
Medical	(6) Laboratory services:
Mental health	Microbiology
Muscular dystrophy	Clinical chemistry
Neurology	Serology
Obstetrics	Hematology
Parasitology	Pathology
Pediatrics	Histopathology
Podiatry	Autopsy
Psychiatric	Basal-metabolism.
Sickle cell anemia	(7) Physical medicine:
Speech	Physical therapy
Hearing	Occupational therapy
Surgery	Speech therapy
Thoracic	Recreational therapy
Tuberculosis	Audiology
Tumor/Cancer	Prosthetics, brace fitting.
Venereal disease	(8) Dentistry:
Diagnostic and preventive medicine	Oral surgery
Private ambulatory service	Operative/Restorative dentistry
Home care program	Erdodontia
Outreach clinic	Prostodontia
	Periodontia

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Orthodontia	Auto-analyzers.
(9) Vocational services.	Autoclaves.
(10) Home health agency.	Automobiles, delivery.
(11) Drug rehabilitation.	Automobiles, passengers.
(12) Alcohol rehabilitation.	Bain manes.
(13) Freestanding health screening centers.	Balances.
(c) Special services:	Basal metabolism units.
(1) Renal dialysis.	Bassinets, heated.
(2) Cardiac catheterization.	Baths, paraffin.
(3) Bum center.	Beds, electric. Beds, manual.
(4) Neurosurgery.	Biochemical analysis units, micro.
(5) Open heart surgery.	Blood processing units.
(6) Organ transplant.	Breathing units, positive pressure.
(7) Therapeutic radiation:	Broilers.
X-ray therapy	Buffer, electric.
Orthovoltage X-ray therapy	Cardiographs.
Megavoltage X-ray therapy	Cardioscooes.
Gamma beam therapy	Carts, food tray, heat-refrig.
Radium therapy.	Centrifuges.
(8) Organ bank.	Chioridometer-titrators, automatic.
(9) Blood bank.	Chromatographs, gas. Cobalt, radioactive.
(10) Neonatal intensive care.	Coldpack units, floor.
(11) Health maintenance organizations.	Colorimeters. Croupettes.
(12) Hemdphilia services.	Difibrillators.
<i>EXHIBIT 2</i>	Dental treatment units.
EXAMPLES OF MAJOR MOVABLE	Diather-ray units.
EQUIPMENT	Disinfect ors.
Air conditioners.	Distilling apparatus.
Analyzers, gas.	Drills, press.
Ambulance.	Drying ovens, paint shop.
Anesthesia units.	Electrocard iographs.
Audiometers.	

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Electroencephalographs.
Electrophoresis units.
Electrosurgical units.
Examining tables, metal and wood.
Fluoroscopes.
Frames, turning.
Furnaces, laboratory.
High 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.
Photometers.
Pulmotors.
Pumps, vacuum and pressure.
Radiation counters.
Radiographic-fluoroscopic combination.
Respirators.
Resuscitators.
Rinsers, sonic.
Scanners, isotope.
Scintillation scalars.
Seriographs, automatic.
Serological baths.
Shaking machines.
Sharpeners, microtome knife.
Shears, squaring floor.
Spectrometers.
Spectrophotometers.
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

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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
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

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

_____ 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

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 _____

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

DIRECTOR OF HEALTH PLANNING AND DEVELOPMENT AGENCY

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, § 1.

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 front 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.

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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.

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.
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- 11.0427 Holidays.
- 11.0428 Determining Holidays.
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- 11.0431 Annual Leave.
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- 11.0441 Separation and Adverse Actions.
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- 11.0444 Demotion.
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- 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.
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- 11.0457 Contract Specialist.
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- 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).

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

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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.

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.

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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 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.

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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.

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 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 then 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.
 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.

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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.
 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:

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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 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 obtained 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.
- 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 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.

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.
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:

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- 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.
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 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 prerequisite 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

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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.
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; amd 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:

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 be 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 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 or 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.
- 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

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 or 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.

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-ASMCA 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 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 phase 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 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.

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- 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

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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 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 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 of 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 Samoa 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 of 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

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.

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- 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.
- 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.

TITLE 11 – CHAPTER 06 – LBJ AMERICAN SAMOA MEDICAL CENTER PROCUREMENT

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- 11.0602 Authority.
- 11.0603 Purpose.
- 11.0604 Definitions.
- 11.0605 Applicability.
- 11.0607 Centralization of Procurement Authority.
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- 11.0609 Centralized Procurement Authority.
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- 11.0613 Duties of the LBJ Chief Financial Officer.
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- 11.0615 Methods of Source Selection.
- 11.0616 Small purchases.
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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.

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- 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;
 - 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:

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- 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.

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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, 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 hen 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 injury 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 MMedicalCenter.
- 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.

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).
- 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.

11.0648 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 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).
- (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 EPA 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

TITLE 12 – PUBLIC UTILITIES

Chapters:

- 01 Power Authority
- 02 Electric Service
- 03 Water
- 04 Sewer
- 05 Emergency Energy Conservation Plan
- 06 Regulations of Local Telecommunications Operations

TITLE 12 – CHAPTER 01 – POWER AUTHORITY

Sections:

- 12.0101 Intent.
- 12.0102 Authority.
- 12.0103 Establishment.
- 12.0104 Powers.
- 12.0105 Board of directors-Appointment-Meetings-Compensation.
- 12.0106 Board of directors-Powers and duties.
- 12.0107 Personnel.
- 12.0108 Transfer of existing utility-Property valuation-ASG capital contributions and loans.
- 12.0109 Accounting-Budget.
- 12.0110 Audit-Consultants-Annual report.
- 12.0111 Transition period.

Editor’s Note: Implementation of this chapter’s provisions, as provided for in § 12 of Ex. Ord. 4-1981, was to be according to a schedule prepared by the power authority task force and carried forward, as supplemented, by the power authority board of directors.

12.0101 Intent.

The ASG desires that the business of generation, transmission, and distribution and sale of electric power within the territory of American Samoa be conducted in accordance with sound business and utility practices, that the rates and charges for that service be just reasonable and equitable to consumers and not unduly discriminatory, that service be reliable, that energy be conserved and facilities and resources efficiently used, and that the needs of the people of American Samoa for electric power be provided for in a timely fashion.

History: Rule 12-81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 1.

12.0102 Authority.

The executive order embodied in Rule 12-81 and codified in this chapter is issued under the authority of Section 6 of Article IV of the Revised Constitution of American Samoa and 4.0303(a) A.S.C.A.

History: Rule 12-81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 2.

12.0103 Establishment

There is established a governmental agency within the executive branch of the ASG known as the American Samoa power authority.

History: Rule 12-81 (Ex. Ord. 4-1981). eff 20 Aug 81, § 3.

12.0104 Powers.

The American Samoa power authority:

- (1) may make contracts, as authorized in this chapter;
- (2) may adopt, amend, and repeal bylaws;
- (3) may purchase or lease and hold personal property it considers necessary or convenient in the transaction of its business, and may dispose of personal property held by it;
- (4) has the power in the name of the ASG to purchase, lease, or sell real estate, and to accept title to that real estate in the name of the government, to accomplish the purposes of this chapter;
- (5) shall make all arrangements for the generation, purchase, transmission, distribution, and sale or other disposition of electric energy generated by facilities of the authority or purchased by the authority within the territory of American Samoa;
- (6) is delegated the Governor’s authority to develop and publish tariffs and schedules of rates, charges, and services and other rules for providing electric energy in accordance with the Administrative Procedures Act, 4.1001 A.S.C.A., et seq.; these rates and charges carry into effect, as near as may be, the standards prescribed for ratemaking in PL 95-617, the Public Utility Regulatory Policies Act, effective 9 Nov 78, 16 USC 2611 et seq.;

- (7) may contract for the procurement of supplies, equipment, materials, personal services other than by employees, and construction with any public or private entity upon such terms and conditions as it finds necessary to the full and convenient exercise of its purposes and powers, subject to all applicable laws and rules; the authority shall receive and account for its inventory of materials, supplies and equipment; and
- (8) may do other things needful and necessary to the full and convenient exercise of the above powers, including but not limited to the construction of facilities on property owned by the government.

History: Rule 12.81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 4.

12.0105 Board of directors-Appointment-Meetings-Compensation.

- (a) The authority is governed by a board of 5 directors appointed by the Governor. At least 2 of the directors shall be experienced in the management of electric utilities, at least 1 shall have a financial background, and at least 1 shall have a legal background. No fewer than 2 directors shall be from outside American Samoa.
- (b) The first director appointed is appointed to a term expiring on 30 Jun 82. The second director is appointed to a term expiring on 30 Jun 83. The third director is appointed to a term expiring on 30 Jun 84. The fourth and fifth directors are appointed to terms expiring on 30 Jun 85. All subsequent appointments are for 4-year terms, or for the unexpired portion of any term. Incumbents may continue to serve after the expiration of a term until a successor is appointed. The Governor designates the chairman annually from among the membership of the board of directors, and the board selects its vice chairman.
- (c) The board of directors shall meet at least 4 times per year. Three directors, at least 1 of whom must have experience in the management of electric utilities and 1 of whom must be from outside of American Samoa, constitute a quorum.

- (d) Compensation is at a rate of \$5,000 per year for directors and \$6,000 per year for the chairman. Travel, lodging, and meal expenses will be provided for outside directors.

History: Rule 12-81 (Ex. Ord. 4.1981), eff 20 Aug 81, § 5.

12.0106 Board of directors-Powers and duties.

All powers vested in the authority are exercised by the board of directors. In carrying out this function, the board shall also:

- (1) elect at its first meeting a vice chairman, who shall preside at all meetings in the absence of the chairman, and other officers as it deems desirable from among its members, and elect such officers annually thereafter at its first meeting in October;
- (2) appoint and prescribe the compensation for the executive director, who is the chief executive officer of the authority and exercises all executive functions, and the business and finance manager, operations manager, and plant managers, who perform duties assigned by the executive director, subject to all applicable laws and rules, this chapter, the bylaws of the authority, and directions of the board;
- (3) develop policies and programs for the administration, management and operation of the authority;
- (4) approve the annual budget of the authority;
- (5) review monthly the operating statement of the authority for the previous month, and such other financial reports as it deems necessary;
- (6) submit monthly operating statements to the governor not later than the twentieth working day after the end of the previous month, and such other financial statements as he directs from time to time; and
- (7) exercise all other powers not inconsistent with applicable laws and rules and this chapter which are reasonably necessary to the administration, management, and operation of the authority and the board.

History: Rule 12-81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 6.

12.0107 Personnel.

All officers and employees of the authority other than the executive director, business and finance manager, operations manager, and plant managers are appointed and compensated in accordance with the requirements of the government employee laws of the ASG, 7.0101 A.S.C.A., et seq.

History: Rule 12-81 (Ex. Ord. 4-1951), eff 20 Aug 81, § 7.

12.0108 Transfer of existing utility-Property valuation-ASG capital contributions and loans.

- (a) At a date fixed by the board of directors, the ASG shall transfer to the authority the right to operate all items of property, including construction in progress, equipment and machinery used in connection with the then existing electric utility operation of the government. Property jointly, used for electric utility and governmental nonutility functions shall be equitably allocated between the government and the authority, provided that the allocation assures the continuing efficient functioning of the electrical generation, transmission, and distribution functions of the government. In the event of dispute, the allocation is determined by the Governor.
- (b) The property accounts for the authority are valued for ratemaking purposes at the depreciated acquisition cost of the property as of the date of transfer, and shall be included in the rate base of the authority. Future capital contributions to the authority from the government shall be by separate authorization and appropriation.
- (c) Advances made for the operations of the authority from the general fund of the government shall be treated as loans and not as part of the permanent capital. Such loans shall be repaid to the government at rates of interest specified at the time the loans are made.

History: Rule 12-81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 8.

12.0109 Accounting-Budget.

The authority shall assume responsibility for the accounting and financial management of the electric

utility, and shall administer or contract with the government for the administration of all accounting systems, including general ledger, fixed assets, accounts receivable, accounts payable, payroll, and cash. It shall establish proper internal accounting controls and procedures, and it shall prepare an annual budget as a part of the Governor's budget process.

History: Rule 12-81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 9.

12.0110 Audit-Consultants-Annual report.

- (a) The authority shall employ a firm of independent certified public accountants with electric utility experience to examine and report upon the status of financial records and accounts, and may renew that employment annually. Copies of those reports shall be furnished to the Governor and the Legislature.
- (b) The authority may make intergovernmental or contractual arrangements for expert consultants to advise and consult with it on all matters related to the operations of the authority including ratemaking, system design, planning, budgeting, and legal matters.
- (c) The authority shall provide an annual report for each fiscal year to the Governor, the Legislature, and the people of American Samoa, not later than 31 Dec.

History: Rule 12-81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 10.

12.0111 Transition period.

All rates, charges, and classifications of the authority in effect during the transfer of property and facilities, and management thereof, to its control and jurisdiction are considered to properly adopted and continue in effect until duly changed.

History: Rule 12-81 (Ex. Ord. 4-1981), eff 20 Aug 81, § 11.

ETHICS POLICY AND REGULATIONS OF THE AMERICAN SAMOA POWER AUTHORITY

This Ethics Policy and Regulations of the American Samoa Power Authority, hereinafter referred to as "ASPA Ethics Policy", shall apply to all employees, directors, officers and agents of ASPA. This policy includes full-time, part-time and contract employees,

hereinafter referred to as “ASPA Employees”. The ASPA Ethics Policy establishes the responsibilities of all ASPA Employees, directors, officers and agents to exhibit ethical behavior and creates an ASPA Ethics Board to review requests for opinions and complaints.

This ASPA Ethics Policy incorporates by reference and includes all statutory and regulatory protections provided to employees under American Samoa law. This ASPA Ethics Policy shall not deprive any career service employee of the employee’s rights under the law; nor shall this ASPA Ethics Policy deprive any contractual employee of the employee’s rights under contract; nor shall this ASPA Ethics Policy deprive any at-will employee of the employee’s rights under the law.

Additionally, this ASPA Ethics Policy shall not be interpreted or construed to extend the rights specified to career service employees to contractual or at-will employees. This ASPA Ethics Policy shall not be interpreted or construed to extend the rights specified to contractual employees to career service or at-will employees.

All ASPA employees, directors, officers and agents are obligated to ethical behavior, to report possible breaches of ethics to ASPA authorities, and to provide accurate and complete information when requested by the ASPA Ethics Board.

I. FAIR AND EQUAL TREATMENT

ASPA herein declares its adoption of a Fair and Equal Treatment Policy. The ASPA Fair and Equal Treatment Policy prohibits an ASPA employee, director, officer or agent from using his or her position with ASPA to gain favor, advantage, or other preferential treatment for himself or herself.

ASPA Employees, directors, officer or agents may not:

1. Seek contracts or employment through his/her ASPA position;
2. Use ASPA time, equipment, facilities, titles, personnel resources, or other public resources to promote personal non-ASPA activity;
3. Encourage, assist or participate in any activity to provide an advantage to or other preferential treatment to any business or person;

4. Engage, assist or participate in any activity to provide an advantage to or other preferential treatment to any business owned a Close Relative or to any person who is a close relative. Close relative is defined under Personal Relationships;
5. Engage or participate in a financial or business transaction with a subordinate;
6. Engage or participate in a business if such business is directly served by the employee, director, officer or agent in his or her capacity with ASPA;
7. Hire, promote, supervise, or otherwise participate in the employment of a close relative, unless the close relative is on a list of eligible ASPA employees.

II. CAMPAIGN ASSISTANCE AND POLITICAL ACTIVITIES

ASPA employees are prohibited from using or allowing others to use ASPA resources, such as time, positions or title, equipment, material, ASPA seal or facilities, for political campaign assistance or political activities. To do so is to give an unwarranted advantage to the candidate or political party benefiting from the activities at ASPA expense.

The prohibitions in this section of the ASPA Ethics Policy apply only to actions or activities:

- (1) on any ASPA premises;
- (2) during working hours or anytime the employees, director, officer, or agent is representing ASPA; or
- (3) the use of any ASPA property, equipment, supplies, or assets.

“Campaign Assistance” means any service or donation of time or anything of value to a candidate for any elected office or for a question, issue or referendum on a ballot, the recall of any elected officer or official or the activities of a political party or a campaign committee. Campaign Assistance includes, but is not limited to:

- (1) selling, purchasing or distributing campaign fundraiser tickets;

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- (2) conducting political meetings;
- (3) distributing campaign literature or materials;
- (4) soliciting campaign contributions, support or assistance; or
- (5) producing campaign literature or materials.

“Political Activities” include, but are not limited to:

- (1) being a party or campaign committee member;
- (2) soliciting members;
- (3) performing duties; and
- (4) fund raising and campaigning.

An ASPA employee, director, officer or agent may not perform, undertake or participate in any Political Activities while at work. An ASPA employee, director, officer or agent may not ask, order, command, or force any other ASPA employee, director, officer, agent or any other person to perform, undertake or participate in any Political Activity while at work. An ASPA employee, director, officer or agent may not:

1. Coerce, demand, or threaten any ASPA employee, director, officer or agent to make contributions, give assistance to or participate in any Political Activity or to provide any Campaign Assistance;
2. Deny employment to or discharge, demote or punish any ASPA employee, director, officer or agent who refuses to make contributions, to give assistance or to participate in any Political Activity or to provide any Campaign Assistance;
3. Promise employment benefits to any ASPA employee, director, officer or agent who makes contributions, gives assistance to or participates in any Political Activity or to provide any Campaign Assistance;
4. Solicit or receive any political contribution from any ASPA employee, director, officer or agent any ASPA facility at any time;
5. Promise employment at ASPA to any individual or company if the individual or company makes contributions, gives assistance to or participates

in any Political Activity or provides any Campaign Assistance;

6. Threaten, discharge, demote, punish, suspend, or make any negative personnel report concerning an ASPA employee, director, officer, or agent who reports a violation of any of the above prohibited activities or any other violation of ASPA Ethics Policy.

This ASPA Ethics Policy also incorporates by reference and shall include A.S.C.A § 7.0807 and any violation of section 7.0807 shall also be a violation of this ASPA Ethics Policy.

Any violation of section 7.0807 by any ASPA employee, director, officer, or agent who is a government employee or officer shall be reported by ASPA officials to the appropriate government official. Section 7.0807, Prohibited political acts-Penalty, provides:

- (a) It is unlawful for any employee of the government to:
 - (1) Use his official authority or influence as an officer or employee of the government for the purpose of interfering with or affecting the result of an election or a nomination for office;
 - (2) Directly or indirectly suggest, advise, command, coerce, or attempt to coerce an officer or employee of the government to pay, lend, or contribute anything of value to any person, committee, organization, agency or party for political purposes;
 - (3) Use property belonging to the government to directly or indirectly benefit or support any political candidate or political campaign.
- (b) Any officer or employee of the government who violates this section is subject to suspension or dismissal from his position with the government, and shall be fined as for a class A misdemeanor.
- (c) Employees of the government, including contract and career service employees, may actively participate in the management of political campaigns, their own included, if the participation is after the employees’ normal

working hours and off the premises of his place of employment, while on annual leave, or while on leave without pay, 7.1201, etc.

III. CONFLICTS OF INTEREST

A conflict of interest occurs when a reasonable person could conclude that the ASPA employee, director, officer or agent’s personal business, or financial interests may interfere with the ASPA employee, director, officer or agent carrying out his/her work, employment, and duty of the public. This ASPA Ethics Policy is designed to prevent ASPA employees, directors, officers or agents who influence or make decisions for ASPA from being involved if the ASPA employee, director, officer or agent’s personal business or financial interests are also involved.

Conflicts of interest occur now and then, especially for ASPA employees, directors, officers and agents who have discretionary authority. When there is a potential conflict of interest, the ASPA employee, director, officer or agent shall provide a full written disclosure of the conflict and remove himself or herself from participating in the matter that raised the conflict.

A. *MANDATORY REPORTING OF AND REMOVAL FROM CONFLICT*

An ASPA employee, director, officer or agent must immediately disclose any potential conflict of interest to the Management, to the Chairman of the ASPA Ethics Board, or to ASPA’s legal counsel. The Chairman of the ASPA Ethics Board and the Executive Director will discuss methods to resolve the conflict such as removal of the ASPA employee, director, officer or agent from participating in any way in the decision making process and delegation of the issue to another qualified ASPA employee, director, officer or agent.

B. *MANDATORY DISCLOSURE OF INTEREST*

Financial disclosures are required from each ASPA employee, director or officer who is paid in excess of \$30,000.00 a year. These disclosures shall be completed and filed by any qualifying individual entering ASPA service and shall be updated each year no later than June 30.

Only the following disclosure forms are open to the public:

- (1) the disclosure of a fact of outside employment; and
- (2) the disclosure of potential conflicts of interest statements.

All other disclosure forms are confidential.

ASG and ASPA rules define direct or indirect participation as a situation where an individual is “involved 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.”

A.S.C.A. §10.0292(e), ASPA Rules Article §8-107.

IV. *GIFTS*

An ASPA employee, director, officer or agent may not ask for nor accept a gift directly or indirectly from any individual, company or entity if: a reasonable person would think that the gift was made to:

- (1) influence the ASPA employee, director, officer or agent’s work at ASPA to the benefit of the individual, company or entity giving the gift; or
- (2) serve as a reward for any discretionary action taken by the ASPA employee, director, officer or agent to benefit the individual, company or entity giving the gift.

Generally, small gifts or tokens of appreciation are not considered to violate this ASPA Ethics Policy. Family fa’alavelave gifts are acceptable unless the gift violates any of the above conditions.

V. *CONFIDENTIAL INFORMATION*

An ASPA employee, director, officer or agent may not use any confidential information for any purpose outside the needs of their employment or duties at ASPA.

ASPA rules define confidential information as “any information which is available to an employee only because of the employee’s status as an employee of ASPA and is not a matter of public knowledge or

available to the public or request.” ASPA Rules, Article §8-107(7).

It is a violation of this ASPA Ethics Policy for any ASPA employee, director, officer or agent to disclose or use confidential information for anyone’s benefit.

This rule also applies to disclosure or use of confidential information any time after an individual leaves ASPA employment.

VI. BUSINESS ACTIVITIES AND FINANCIAL INTEREST

1. An ASPA employee, director, officer or agent may not engage in any business activity or have any financial interest that is incompatible with the ASPA employee, director, officer or agent performing his or her duties or that may tend to impair or influence the judgment or work activities of the ASPA employee, director, officer or agent.
2. Any ASPA employee, director, officer or agent shall not participate in or take any discretionary action directly affecting a business or any other matter, if the ASPA employee, director, officer or agent;
 - (1) has a substantial financial interest in the matter; or
 - (2) is a member of or associated with a firm that renders service directly related to the matter.
3. An ASPA employee, director, officer or agent may not acquire a financial interest in a business directly involved in any discretionary action the ASPA employee, director, officer or agent will likely take in the future.
4. An ASPA employee, director, officer or agent may not have “an appearance of a conflict of interest”. An appearance of a conflict of interest occurs when the ASPA employee, director, officer or agent has a personal business or financial interest that, under certain circumstances, could result in a conflict of interest.

VII. PERSONAL RELATIONSHIPS

An ASPA employee, director, officer or agent may not participate in any decision making process if it would directly affect someone with whom the ASPA employee, director, officer or agent has a close personal relationship, such as a relative or close friend. “Close Relative” means an individual who:

- (1) is, either by blood, law or marriage, including half, step, foster and adoptive relations, a spouse, child, cousin, grandchild, grandparent, or sibling of an ASPA employee, director, officer or agent or their spouse; or
- (2) an individual who principally resides in the same residence as the ASPA employee, director, officer or agent.

VIII. NON-ASPA EMPLOYMENT

An ASPA employee, director, officer or agent, except contract employees, are not prohibited from undertaking outside employment as long as such employment does not create any real or appearance of a conflict of interest, does not adversely affect their work and responsibilities to ASPA, and so long as the employee does not act for on the behalf of anyone against the interest of ASPA.

IX. EMPLOYMENT FOLLOWING TERMINATION OF EMPLOYMENT WITH ASPA

An ASPA employee, director, officer or agent may not disclose confidential information obtained while working for ASPA under circumstances or for any purpose unless compelled to do so by law.

An ASPA employee, director, officer or agent may not receive payment from a private interest for one year after the termination of employment with ASPA where (1) such employment by a private interest involves ASPA projects in which the employee participated or was given access to Confidential Information while at ASPA; or where (2) such employment by a private interest includes appearing on behalf of or assisting the private interest before any ASPA agency on a matter in which the employee was directly involved or which was under consideration by the ASPA employee, director, officer or agent during the course and scope of employment at ASPA. The ASPA employee, director, officer or agent may receive payment only if the employee was not involved in the matter.

“Confidential Information” is defined above in this ASPA Ethics Policy. “Appear” means to have any oral or written communication with the ASPA agency. “Assist” means aiding another to produce the work product that goes before the ASPA agency; however, to assist does not require the individual to personally “Appear” before the ASPA agency.

The purpose of the restrictions is to prevent the disclosure of confidential information and limit the influence of former ASPA employees, directors, officer or agents when such individual takes any action that may result in a personal benefit to the former ASPA employee, director, officer or agent following termination of employment with ASPA.

X. PENALTIES AND DISCIPLINARY ACTIONS FOR VIOLATIONS

Any ASPA employee, director, officer or agent violating this ASPA Ethics Policy may be subject to reprimand, probation, demotion, suspension, or discharge, depending on the seriousness of the violation. Any such action against a career service employee shall comply with the requirements of American Samoa laws and regulations governing career service employees. Any such action against a contract employee shall comply with the provisions of the contract and American Samoa laws and regulations governing contract employees. Any such action against an at-will employee shall comply with the provisions of American Samoa laws and regulations governing at-will employees.

In addition, any contract that was entered into as a result of any violation of this ASPA Ethics Policy may be voided by ASPA. Any benefit provided by the ASPA employee, director, officer or agent may be recovered from the ASPA employee, director, officer or agent that violated this ASPA Ethics Policy. Any compensation, gift, or benefit received in violation of this ASPA Ethics Policy may be recovered from the violator.

XI. WHISTLE-BLOWER POLICY

Any ASPA employee, director, officer or agent or member of the public who submits an ethics or improper activity complaint shall not be retaliated against. Any ASPA employee, director, officer or agent who is found retaliating against any individual or company that has made a complaint shall be

subject to reprimand, suspension, demotion, or termination. No ASPA employee, director, officer or agent shall restrict or censure another individual or company for speaking to a member of the ASPA Ethics Board, an ASPA Member of the Board of Directors or ASPA Management regarding potential ethics or improper activities issues or complaints. Any action against an ASPA employee, director, officer or agent for a violation of this provision shall be governed by the Penalties and Disciplinary Actions for Violations provision of this ASPA Ethics Policy.

XII. THE ASPA ETHICS BOARD

The ASPA Ethics Board shall be constituted to hear and to make decision on any potential ethics violations. The Ethics Board shall consist of a minimum of five members consisting of the Chairman of the ASPA Board of Directors and two other members of the Board of Directors appointed by the Chairman to hear a request for an ethics determination or case; the Executive Director; and a member from the Community appointed by the Chairman of the Board. If there is a conflict of interest with any member of the ASPA Ethics Board, the Chairman of the ASPA Board of Directors shall appoint replacement members.

History: Rule 02-2004, May 12, 2005

TITLE 12 – CHAPTER 02 – ELECTRIC SERVICE

Sections:

- 12.0200 Definitions
- 12.0201 Service generally-Utility defined-Rate review.
- 12.0202 Bill payment-Late penalty.
- 12.0203 Disconnection for nonpayment-Reconnection.
- 12.0734 Connections.
- 12.0205 Tampering with meters and conductors-Breaking seals.
- 12.0206 Alterations and additions to electrical equipment installations.
- 12.0207 Liability limits of utility-Three-phase circuit protection.
- 12.0208 Phasing failure and protection.
- 12.0209 Resale of energy.
- 12.0210 Limit of utility responsibility.
- 12.0211 Trouble calls.

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- 12.0212 Meter calibration.
- 12.0213 Public information and requests.
- 12.0214 Current specifications-Three-phase availability-Equipment-purchase warning.
- 12.0215 Application for service-Notice of contemplated installations.
- 12.0216 Easement requirement.
- 12.0217 Installation charges.
- 12.0218 Deposit.
- 12.0219 Power line extension fees.
- 12.0220 Delivery point-Defined-Approval-Multiple occupancy.
- 12.0221 Delivery point-Designation-Anchorage for connections.
- 12.0222 Separate conductors with single drop.
- 12.0223 Meter location.
- 12.0224 Number of services and meters.
- 12.0225 Grounding requirement.
- 12.0226 Meter equipment issuance.
- 12.0227 Inspection before energization.
- 12.0228 Noncomplying construction.
- 12.0229 Temporary services.
- 12.0230 Termination of service.
- 12.0231 Schedule A-Residential service.
- 12.0232 Schedule B-Commercial and small-power service.
- 12.0233 Schedule LPI-Large-power service.
- 12.0234 Debt retirement and capital improvement surcharge.

12.0200 Definitions

- (a) “Delivery point,” as used in this chapter, is defined as the point where the Utility’s service drop wires attach to the customer’s structure.
- (b) “Due date,” as used in this chapter, is defined as the stated due date on a Utility bill for payment by a customer of a utility bill. A utility bill shall be considered delinquent if not paid on or before the due date.
- (c) “Fuel,” as used in this chapter, is defined as a liquid or liquefiable petroleum product or other consumable substance that is used to generate heat or power, including, but not limited, to fuel oil and lube oil.

- (d) “Fuel Surcharge Multiplier (“FSM”),” as used in this chapter, is defined as a constant factor of 0.08032.
- (e) “Infrastructure,” as used in this chapter, is defined as equipment necessary to provide electric power to the people of American Samoa, including, but not limited to, power poles, towers, underground and overhead electric, telephone and communication lines, wires or cables, pad and pole mounted transformers, guy wires, anchors, switches, vaults, junction boxes, and conduits.
- (f) “Maximum Allowable Price (“MAP”),” as used in this chapter, is defined as the weighted average allowable price per gallon of fuel oil as determined by the ASG Office of Petroleum Managements (“OPM”).
- (g) “Terminate electric facilities” or “Termination of electric facilities,” as used in this chapter, is defined as the complete removal by the Utility of the Utility’s kilowatt hour meter, metering equipment and facilities, and any and all electric distribution facilities from the premises of the customer.
- (h) “Billing demand,” as used in this chapter, is defined as Maximum Demand.
- (i) “Maximum demand,” as used in this chapter, is defined as the average kilowatt delivered during the 15-minute period in which the consumption of energy is greatest during the month for which the determination is made. A customer’s maximum demand shall ordinarily be determined by a recording demand meter. In the absence of such demand meter, or if the meter fails to register, the Utility shall estimate maximum demand from the best information available to the Utility.
- (j) “Terminate service” or “Termination of service,” as used in this chapter, is defined as the disconnection of electric service by means of the Utility’s removal of its kilowatt hour meter from the customer’s premises, but does not rise to the level of termination of electric facilities.
- (k) “Utility,” as used in this chapter, is defined as the American Samoa Power Authority.

- (l) “Working hours,” as used in this chapter, is defined as the hours the Utility’s customer service centers are open to the public.

History: Rule 2-2015; eff. 20 June 2015 (Ex. Ord. 4-1981).

12.0201 Service generally – Rate review.

- (a) The Utility is mandated by A.S.C.A. § 15.0102(7) to provide for generation and distribution of electric energy.
- (b) It is the desire of the utility to render adequate electric services at rates that are as economical as possible. The Utility provides overhead facilities only as far as the delivery point. The meter loop, including the meter socket, must be installed by the owner of the property or the customer. The wiring, to be done by the owner of the property or customer, shall be coordinated with the Utility. The enactment of this chapter does not create any specific rights to products or services. All products or services mentioned or listed in this chapter are provided by the Utility at the Utility’s sole discretion.
- (c) Service will be provided in the order in which applications are received. For this reason and in the interest of good business principles, the rules set out in this chapter have been adopted.
- (d) Any per-gallon discount received by the Utility for its purchase of fuel shall be retained by the Utility.
- (e) The rules set out in this chapter are not intended as construction guides for any purpose except:
 - (1) to locate the delivery point where proper connection to the distribution system is possible
 - (2) to locate the meter where it can be read conveniently during normal working hours; and
 - (3) to provide code clearance for service wires
- (f) Electrical service will be provided and billed according to the rate schedule codified in section 12.0230 of this chapter, as applicable to the customer based on the established classes.

History: Rule 4-80, eff 1 Apr 80, Intro (modified 12 Jun 80 after further hearing); repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0202 Bill payment-Late penalty.

- (a) Payment shall be due on the Utility’s issuance of an invoice or utility bill and shall be delinquent if not paid on or before the due date specified on the invoice or utility bill. The due date of each account shall fall on a regular working day or Saturday, however, a customer’s failure to receive a bill shall not excuse a late payment.
- (b) For rate classes B through F, rates as listed on the bill are net, the gross being 5% higher. If the customer does not pay the utility bill on or before the due date, the gross rate shall apply and service may be terminated after proper termination notice to the customer.

History: Rule 4-80, eff 1 Apr 80, Payment of Bills; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0203 Termination of service – Termination of electric facilities - Reconnection.

- (a) If a bill becomes delinquent, the Utility shall, at its sole discretion, terminate utility service or terminate facilities after proper notice has been provided to the customer as provided by law in A.S.C.A. § 15.0202. Default on any amount owed to the Utility shall be construed as a default on all services and shall entitle the Utility to terminate service or terminate facilities for any or all utility services. The Utility shall have the option to demand the full amount of both delinquent and current bills be paid in full. If any account is delinquent, utility services to all locations may be terminated. If the Utility has terminated service, the Utility will not reconnect service until the customer has paid all arrears and applicable reconnection fees.
- (b) If a field call is made by Utility personnel to reconnect service because of termination of service, a reconnection fee shall apply for all field calls during normal working hours. If a field call is made after normal working hours, an additional fee shall apply.
- (c) If the Utility has terminated service, it shall not be reconnected until the delinquent bill, all fees

and charges for services, and all fee and charges for reconnection, connection, and other field trips have been paid in full. If reconnection occurs after the end of six months then, the reconnection shall be treated as a new service connection. ASPA may require the customer to obtain a DPW Building Branch Certificate prior to reconnection.

- (d) If the Utility has terminated electric facilities, a reconnection shall be treated as a new service connection after all old and/or delinquent bill, fees and charges have been paid in full.

History: Rule 4-80, eff 1 Apr 80. Non-payment of thus; and Rule 4-86, eff 22 Dec 86. § I; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0204 Connections.

All final connections, whether permanent or temporary, between the Utility’s lines and the customer’s wiring will be made by the Utility, and the Utility shall not permit or tolerate unauthorized connections.

History: Rule 4-80, eff 1 Apr 80, Final Connections; revised by Rule 2-2015, eff 20 June 15(Ex. Ord. 4-1981).

12.0205 Tampering with meters and conductors-Breaking seals.

- (a) Tampering with the meter, tampering with conductors carrying unmetered current, or breaking the Utility’s seal without the Utility’s express written authorization is prohibited and will not be tolerated.
- (b) Where electricity has been diverted by breaking the Utility’s meter seals or by bypassing the meter or by any other means, the Utility, at its sole discretion shall immediately terminate service or terminate electric facilities. Before service is reconnected, the customer shall pay for diverted usage, estimated by the Utility from the best available data and evidence, and shall pay a tampering fee and a reconnection service fee. In the event of recurring instances of the diversion of electricity, tampering, or other wrongdoing, the Utility reserves the right to refuse service to anyone.

History: Rule 4-80, eff 1 Apr 80. Meter Tampering and Seal; and Rule: 4-86, eff 22 Dec 86, § 2; revised by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0206 Alterations and additions to electrical equipment installations.

When a customer contracts with the Utility to connect a customer’s installation to the Utility’s electric system, arrangements are made by the utility for meters, transformers, and other equipment to supply the installation as it is at the time of contract. It is required that the customer notify the Utility of any material change in equipment which is connected to the wiring system. Any and all material changes may delay installation.

History: Rule 4-30, eff 1 Apr 80. Alterations and Additions; revised by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0207 Liability limits of utility – Single and three-phase circuits.

- (a) The utility will endeavor to furnish continuous service but does not guarantee uninterrupted service. The Utility is not liable for any damage, except in cases of gross negligence or negligent workmanship by the Utility, that the customer may sustain by reason of the failure or the partial failure of the power, or the failure or the reversal of phases, or variation in service characteristics, whether caused by accident, repairs, acts of God, or other causes; nor is the Utility liable for damage that may be incurred by the use of any service wiring, connections, instruments, service or electrical appliances installed by or for the customer; nor is the Utility liable for damage that may be incurred due to the presence of the Utility’s property on the customer’s premises.
- (b) The customer is solely responsible for protection of appliances, equipment, and electric facilities on the customer side of the delivery point against disturbances (including but not limited to power surges and sags) on the electric system. The Utility strongly urges its customers to use surge protection devices to protect its appliances and equipment against disturbances.
- (c) In the event the customer requires three-phase service, the installation and maintenance of adequate starters with circuit breakers and protection devices to protect against single-

phase conditions and phase reversal is advisable, and their installation and maintenance is the responsibility of the customer.

- (d) In the event a customer experiences property damage allegedly caused by the failure or partial failure of power, by failure or reversal of phases, or by variation in service characteristics, the Utility shall, upon formal written request by the customer made not more than five (5) days business days from the date of the incident, initiate an investigation to determine if the property damage was the result of the Utility's gross negligence or negligent workmanship. Within thirty (30) days of the completion of the Utility's investigation, the Utility will notify the claimant in writing of its findings and the progress of the resolution of the claim (the "Notice"). Within thirty (30) days of the customer's receipt of the Notice, the Utility shall inform the customer in writing of its final decision. In the event that the Utility finds the damage was due to the Utility's gross negligence or negligent workmanship, the Utility shall refund the current value of the damaged item(s). In the event the Utility finds the damaged property was not due to the Utility's gross negligence or negligent workmanship, the claim will be denied.
- (e) Upon denial of a claim, the claimant may elect, at no cost to the Utility, to have the damaged property examined by an independent electrician. Upon written report by the independent electrician, the Utility will reexamine and reevaluate its initial decision. The Utility will consider the independent electrician's findings when reexamining its initial decision, but is not bound by the electrician's findings.
- (f) In no event shall the Utility be liable for consequent damage, punitive damages, or interest prior to or after the Utility's final decision.
- (g) It is the intention of the Utility that, in accordance with A.S.C.A. § 43.1203(b)(4), this section provides a remedy for the types of claims established herein.

History: Rule 4-80, eff 1 Apr 80, Interruption and Liability; revised by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0208 Phasing failure and protection.

Delivery of single-phase power to a 3-phase motor is possible at any time on any system. Most of the load on the Utility's system is single-phase; therefore the Utility's system is protected by single-phase cutout fuses and reclosers. For customers to properly protect three-phase motors from overload, the Utility suggests that customers use motor starters that have three thermal elements. Customers may enhance this protection by installing electronic motor saver devices.

History: Rule 4-80, eff 1 Apr 80, Single Phasing; revised by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0209 Resale of energy.

It shall be unlawful for the customer to resell any of the electric energy received from the Utility; nor shall a customer be permitted to connect his service with that of any other customer or in any way supply any other person or premises with electricity through the customer's service, except as approved by the Utility.

History: Rule 4-80, eff 1 Apr 80, Resale of Electric Energy; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0210 Power purchasing agreements.

The Utility may, at its sole discretion, choose to negotiate and enter into one or more power purchasing agreements with one or more customers classified under rate classes C, D, E, and F, which shall govern the customer's applicable rates, charges, standby capacity, fees, and other related services of the Utility. Power purchasing agreements shall be bilateral agreements between the Utility and the customer and shall not exceed seven (7) years in duration. Power purchasing agreements shall not be binding on the Utility until implemented in accordance with the Administrative Procedures Act, A.S.C.A. §§ 4.1001 et. Seq. Power purchasing agreements shall not be renewed or extended unless re-implemented in accordance with A.S.C.A. §§ 4.1001 et. Seq.

History: Rule 4-80 eff 1 Apr 80, Primary Delivery Point; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0211 Trouble calls.

The utility is responsible for maintaining electric service only up to the delivery point. The consumer should, therefore, determine that the trouble is not the building wiring or equipment before requesting trouble call service from the Utility. The Utility’s telephone operators and customer service agents are neither engineers nor electricians and therefore it is not reasonable for customers to rely upon any electrical advice given over the telephone.

History: Rule 4-80, eff 1 Apr 80, Trouble Calls; revised by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0212 Meter calibration.

Upon request, the Utility will test a customer’s meter, free of charge, for correct calibration once every 365 days. A fee shall be applied for each subsequent test occurring within the 365 day period. Any meter shown by test to have an average error of more than 2.0% will result in an adjustment of the billing for the last billing period. Adjustments shall be based upon the best available data and evidence of the Utility.

History: Rule 4-80, eff 1 Apr 80. Meter Calibration; and Rule 4-86. eff 22 Dec 86, § 3; revised by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0213 Public information and requests.

The public shall be afforded a reasonable opportunity to inspect the Utility’s rules, final orders, decisions, and opinions at the utilities administrative/operations office during regular working hours.

History: Rule 4-80. eff 1 Apr 80. Public Information and Requests; revised by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0214 Current specifications-Three-phase availability-Equipment-purchase warning.

(a) Power is normally delivered at a system frequency of 60 hertz and is available at the following voltages:

- (1) Single phase service voltages:
 - (A) 120 Volt, Two Wire, Grounded Neutral;
 - (B) 120/240 Volt, Three Wire, Grounded Neutral; or

(C) 120/208 Volt, Three Wire, Grounded Neutral.

(2) Three phase service voltages:

(A) 120/208 Volt, Wye, four wire, Grounded Neutral;

(B) 120/240 Volt Delta, Four-Wire, Grounded Neutral;

(C) 240/480 Volt, Delta, Three Wire, Grounded Neutral;

(D) 240/480 Volt, Delta, Four Wire, Grounded Neutral; or

(E) 277/480 Volt, Wye, Four Wire, Grounded Neutral.

(b) Availability of three-phase service is limited. It should not be assumed that three-phase power will be available unless a contract has been signed for such service, which contract may require the owner to make a repayment to cover construction costs.

(c) It is recommended that the customer buy no electrical equipment until an application for service has been made and the available delivery voltage has been agreed upon and verified.

History: Rule 4-80, eff 1 Apr 80, Voltage; repealed and replaced by Rule 2-2015, eff 20 June (Ex. Ord. 4-1981).

12.0215 Application for service – Changes in service.

(a) Customers or prospective customers should inform the Utility in writing as early as possible of contemplated installations in order to allow the Utility to plan details to provide service. This is particularly true with respect to persons desiring service beyond the existing electric distribution lines of the Utility; written applications for such service should be made before wiring installations have begun.

(b) Consumers must make written applications for electric service and execute the Utility’s standard form(s) when the Utility determines it to be necessary. Customers shall pay the necessary deposits and connection charges. No application is complete until all payments have

been made and the Utility’s standard form(s) have been executed.

- (c) In the case of rented or leased property, for all customer classes, the landlord or owner of said property must co-sign for the tenant or renter on the initial application or transfer of an account. Cosigners shall be held financially responsible for payment of any past due utility bills of the tenant. This applies to all rate classes. Utility service will be disconnected and not be restored until payments or a payment plan is made to resolve past due utility accounts.
- (d) The Chief Executive Officer and the Chief Operations Officer, in consultation with Engineering and Customer Service division managers, are empowered to authorize connections and/or furnish electricity in emergency circumstances. No promise, agreement, or representation of any employee or agent of the Utility, with reference to furnishing electricity, shall be binding on the Utility unless it is authorized by the Chief Executive Officer or the Chief Operations Officer.

History: Rule 4-80, eff 1 Apr 80, Written Application; revised and amended by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0216 Easement requirement.

To accomplish the Utility’s duties and purposes codified in A.S.C.A. § 15.0102, including the design, installation, operation, and maintenance of American Samoa’s electric utility infrastructure, it is essential that the Utility obtain the right to install and maintain equipment necessary to provide electric power to the people of American Samoa, including but not limited to, power poles, towers, underground and overhead electric, telephone and communication lines, wires or cables, pad and pole mounted transformers, guy wires, anchors, switches, vaults, junction boxes, and conduits. The customer shall execute, or have the property owner execute, the Utility’s standard form easement at no cost to the Utility. The Utility or its duly authorized agents shall at all reasonable times have the right to enter and remain on the customer’s premises for any purpose properly connected with the service, connection, or termination of water or electric service to any customer.

The area of the Utility’s easement shall be equal to the minimum required clearance or setback prescribed by the most current version of the National Electric Safety Code (“NESC”) for that particular item of equipment or Infrastructure.

Damaging Infrastructure within the easement, or encroachment upon the Utility’s easement or interference with the Utility’s right-of-way granted by this chapter, including, but not limited to, erecting buildings, structures, or improvements upon the Utility’s easement and right of way is prohibited. If the landowner damages or causes damage to the Infrastructure within the easement, or constructs or causes the construction of buildings, structures, or improvements upon or within the Utility’s easement in violation of this chapter, the landowner shall reimburse the Utility for any and all expenses associated with or arising from replacing the Utility’s Infrastructure, relocating the Utility’s Infrastructure, or removing the building, structure, or improvement, whichever the Utility deems to be in its best interest. Infrastructure replacement or relocation costs shall include, but are not limited to those specified in section 12.0231 of this chapter. The costs required to remove the landowner’s building, structure, or improvement shall be borne by the landowner.

History: Rule 4-80, eff 1 Apr 80, Easement; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0217 Deposits.

- (a) For classes A, B, C, and E, a deposit shall be required. The amount required for a deposit shall be as specified in section 12.0231 of this chapter, and may be increased on a per-customer basis as necessary to protect the interests of the Utility.
- (b) All existing deposits shall be reviewed at the discretion of the Utility. Deposits may be refunded if upon review the Utility determines that the customer’s credit standing is satisfactory. Additional deposits may be required if the Utility determines that the customer’s credit standing is not satisfactory.

History: Rule 4-80, eff 1 Apr 80, Installation Charge for New Service; and 4-86, eff 22 Dec 86, § 4; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0218 Power line extension fees.

A fee shall apply to cover the Utility’s costs and expenses incurred in extending any and all high-voltage distribution lines for the electrical servicing of a particular building, residence, or subdivision. This fee is levied to cover expenditures to supply any and all electrical requirements for annexations and building sites not previously served. The power line extension fee will also be levied when an existing high-voltage line is not adequate to supply the requirements of new construction or development.

The Utility shall not be required to construct any distribution extension under this or other applicable policies if such extension is, in the reasonable judgment of the Utility, economically infeasible or impractical. Service may, however, be provided to customers on terms which require payment of any amount sufficient to justify the Utility’s investment in facilities.

History: Rule 4-80, eff 1 Apr 80, Deposits; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0219 Delivery point.

(a) With the exception of the meter, the Utility shall have no responsibility to own, construct, operate, repair, or maintain any facilities, appliances, or equipment beyond the delivery point. The delivery point must be in clear view of a power pole. The delivery point must be approved by the Utility before building wiring is installed.

History: Rule 4-30, eff 1 Apr 80, Power Line Extension Fees; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0220 Delivery point – Designation – Anchorage for connections

(a) Prior to connection, the customer shall ascertain from the Utility to what point on the customer’s structure the Utility’s service drop wires will be attached. Upon inquiry by the customer, the Utility will designate a location for the service drop wires and the point of attachment to the building. The Utility will assume no responsibility to change the location of its service drop wires if an improper location is chosen without consultation with the Utility or if the designated location is not utilized.

- (b) The point selected for the attachment of the service drop wires must be such as to make it unnecessary to install more than one set of wire attachments on the customer’s structure. Service drop wires shall not interfere with windows, doors, awnings, or other parts of the buildings or be readily accessible to persons at windows and doors or other accessible areas.
- (c) Safe and adequate anchorage structures for the Utility’s service connections are required of the customer, and in no case will be the Utility be responsible for damage to any of the customer’s buildings or structures to which service wires are attached or have been attached.
- (d) Where service wires are to be installed on buildings with stucco, hollow tile, stone brick veneer, plaster, stone coated or sheet iron exteriors, or where there is not surface available that is suitable for the attachment of service knobs having a screw fastening, the customer shall install suitable anchorage bolts or spool racks.
- (e) Where the load to be served is sufficiently large to require the use of overhead service conductors on No. 3 AWG and larger, 5/8-inch galvanized bolts, one for each wire, are required. Where the service conductors are smaller than No. 3 AWG, the bolts may be smaller than 5/8 inch but in no case smaller than 3/8 inch in diameter. The bolts are to be spaced to conform to the rack supplied by the Utility and should extend through the wall and be anchored on the inside surface to a substantial washer not less than 1/8 inch thick and two inches square. The threaded portions of the bolts are to project at [least] 2 inches beyond the outer surface of the building wall. Racks will be supplied by the Utility.

History: Rule 4-80, eff 1 Apr 80, Delivery Point; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0221 Delivery point-Designation-Anchorage for connections.

Where no accessible common meter location is available for buildings such as duplex houses, apartment buildings, etc., separate sets of service entrance conductors brought out to a common point

on the building wall, to be connected to a single service drop, are necessary.

History: Rule 4-80, eff 1 Apr 80, Service; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0222 Meter locations.

- (a) For business normally open during normal business hours, meters may be located inside. All others meters shall be outside. The meter must be located not less than five feet nor more than seven feet above ground or floor level from which the meter is to be read. The meter cannot be located on locked porches or in any area that is not readily accessible by the Utility. The Meter must be accessible to the Utility and there must be adequate clearance around the meter.
- (b) Meters not installed in locations where the meter readers or service men may inadvertently damage flower beds or shrubbery, or where it will be necessary for them to climb over fences or other obstructions to read or service the meters, or in locations where they will extend unguarded into alleys or driveways, or where they will cause inconvenience either to the customer or the Utility's representatives.

History: Rule 4-80, eff 1 Apr 80, Service Entrance Conductors; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0223 Number of services and meters.

The utility will connect only one set of service conductors to a building for each set of service rendered except where special permission is obtained. Any building which is to have more than one set of service conductors must have a service wiring plan approved by the Utility. If the building is occupied by one customer, only one meter for each class of service rendered will be installed. If occupied by several customers, each one shall become a customer of the Utility and a meter for this respective class of service will be installed.

History: Rule 4-80, eff 1 Apr 80. Location of Meter; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0224 Grounding equipment.

The customer shall be required to install ground wires in accordance with the requirements and

specifications of the most current version of the National Electrical Code (NEC). This section shall be a necessary requirement for all service entrance installations.

History: Rule 4-80, eff 1 Apr 80. Number of Services and Meters; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0225 Inspecting before energization

All wiring in all buildings must be inspected before initial energization. All major additions to the wiring must be inspected. The Utility will not provide service to any building which has not been inspected by the ASG and for which a certificate of inspection has been issued. The Utility assumes no responsibility for the condition of any wiring beyond the delivery point.

History: Rule 4-30, eff 1 Apr 80, Grounding; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0226 Noncompliance with rules.

The utility reserves the right to refuse service to any customer who does not comply with the rules set out in this chapter or with the most current version of the NESC and/or NEC.

History: Rule 4-80, eff 1 Apr 80, Procedure; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0227 Temporary services.

- (a) When temporary service is desired, the prospective customer must make arrangements directly with the Utility well in advance of the requested service date. Temporary installations requiring special service, meter, or other work, such as for construction purposes, exhibits of short duration, etc., are made at the expense of the customer. In all such cases, an advance payment sufficient to cover the estimated construction expense will be required.
- (b) Service entrances, meters, and other wiring on temporary installations are installed in the same manner as for permanent installations, whether indoor or outdoor. When no building is available for the installation of service conductors and service equipment, it will be necessary to consult the Utility for recommendations as to suitable support for service drop wires, the meter, and

weatherproof housing for the service equipment. Service entrance wiring and equipment will be supplied and installed by the customer just as for permanent installations and in the location designated by the Utility.

History: Rule 4-50, eff 1 Apr 80. Inspection; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0228 Termination of service – Termination of electric facilities.

- (a) Once service is established, the customer shall be responsible for the payment for the power which is registered on the meter assigned to the customer until such service order terminated by the customer in writing and such service is finally terminated by the Utility. All outstanding bills, fees and charges must be settled upon termination of service or termination of electric facilities.
- (b) When notice for termination of service or termination of electric facilities is ordered on Saturday or Sunday, service will not be termination until the next working day and the meter reading at the time of termination shall determine the final bill.

History: Rule 4-80, eff 1 Apr 80, Unsatisfactory Contractor Installation; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0229 Variable fuel surcharge.

A variable fuel surcharge shall apply to all classes of customers as those classes are set forth in section 12.0230 of this chapter. At a minimum, the variable fuel surcharge shall recover all fuel expenses incurred by the Utility in producing the total kilowatt hours the Utility produces per month. The variable fuel surcharge is calculated by multiplying the Fuel Surcharge Multiplier by the Maximum Allowable Price.

History: Rule 4-80, eff 1 Apr 80. Temporary Services; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0230 Termination of service.

- (a) Class A. Residential Service.

CLASS A

RESIDENTIAL SERVICE

APPLICABILITY:

Applicable to domestic customers for residential use, the major use of which is for lighting and household appliances for the personal comfort of those residing therein; provided however, that if the demand is over 25 kw, the customer may be billed under rate class entitled “Large General Service,” at the sole option of the Utility.

TYPE OF SERVICE:

Sixty cycle, single phase at utility’s standard voltage.

RATE & CHARGES:

The rate and charges applicable to the customer in Class A are as follows:

- (a) Monthly customer service charge
- (b) Base Energy Rate, and
- (c) Variable Fuel Surcharge

Monthly Customer Service Charge

\$4.00 per month until June 30, 2010;

\$6.00 per month from July 1, 2010 and thereafter.

Base Energy Rate

\$0.0954 per kWh per month for all kWhs used.

Variable Fuel Surcharge

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

DELIVERY POINT:

The above rates are based upon the supply of service to the entire premises through a single meter at single phase voltage. Separate supply for the same customer at other points of consumption or meters or at a different voltage shall be separately metered and billed.

PAYMENT:

The current bill is due in full on the date specified in the bill.

SERVICE CONDITIONS:

- (a) The rated capacity of single-phase motors shall not be in excess of 10hp.

(b) Service under this class is limited to customers whose load requirements can be met by transformers having a capacity not to exceed 25kW.

(c) Service is subject to the rules of the Utility.

(b) Class B. Small General Service

CLASS B

SMALL GENERAL SERVICE

APPLICABILITY:

Applicable to nonresidential customers and 3-phase customers; provided, however that if the demand is over 25 kW, the customer may be billed under the rate class Large General Service, at the sole option of the Utility.

TYPE OF SERVICE:

Sixty cycle, single-phase and/or three-phase, where available at the Utility's standard voltage.

RATES & CHARGES:

The rate and charges applicable to the customer in Class A are as follows:

- (a) Monthly customer service charge
- (b) Base Energy Rate, and
- (c) Variable Fuel Surcharge

Monthly Customer Service Charge

- (a) Single-phase service: \$5.00 per month
- (b) Three-phase service: \$10.00 per month

Base Energy Rate

\$0.1045 per kWh per month for all kWhs used.

Variable Fuel Surcharge

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

DELIVERY POINT:

The above rates are based upon the supply of service to the entire premises through a single or three phase voltage. Separate supply for the same customer at

other points of consumption or meters or at a different voltage shall be separately metered and billed.

PAYMENT:

Above rates are met, the gross bill being 5% higher. In the event the current bill is not paid by the due date specified in the bill, the gross rate shall apply.

SERVICE CONDITIONS:

- (a) The rated capacity single-phase motors shall not be in excess of 10hp.
- (b) Service under this class is limited to customers whose load requirements can be met by transformers having a capacity not to exceed 25kW.
- (c) Service is subject to the rules of Utility.
- (c) Class C. Large General Service

CLASS C

LARGE GENERAL SERVICE

APPLICABILITY:

Applicable to customers and 3-phase lines and Class A and Class B customers exceeding demand of 25 kW.

TYPE OF SERVICE:

Sixty cycle, single-phase or three-phase, at the Utility's standard voltage.

SECONDARY METERED SERVICE RATES & CHARGES:

The rates and charges applicable to the customer in Class C are as follows:

- (a) Monthly customer service charge
- (b) Base Energy Rate
- (c) Demand Charge
- (d) Variable Fuel Surcharge
- (e) Power Factor Charge

Monthly Customer Service Charge

\$25.00 per month

Base Energy Rate

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\$0.0876 per kWh per month for all kWhs used.

Demand Charge

\$5.00 per kW per month of billing demand. Billing demand is defined as highest of:

- (a) 25 Kilowatts (kW), or
- (b) Maximum demand (kW).

Variable Fuel Surcharge

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

Power Factor Charge:

When the electricity delivered to the customer has an average monthly power factor of less than 0.95, the Utility may, at its sole discretion, install reactive kVArh meters and increase the demand charge by a power factor charge as set forth in section 12.0234 of this chapter.

MAXIMUM DEMAND:

“Maximum demand” is the average kilowatt delivery during the 15-minute period in which the consumption of energy is greatest during the month for which the determination is made. The maximum demand shall normally be determined by a recording demand meter. In the absence of such demand meter, or if the meter fails to register, the maximum demand shall be estimated from the best information available.

DELIVERY POINT:

The above rates are based upon the supply of service to the entire premises of the customer through a single delivery and metering point at three phase voltage, 60 cycles at the Utility’s standard voltage. Separate supply for the same customer at other points of consumption or meters or at a different voltage shall be separately metered and billed.

PAYMENT:

Above rates are met, the gross bill being 5% higher. In the event the current bill is not paid by the due date specified in the bill, the gross rate shall apply.

SERVICE CONDITIONS:

Service is subject to the rules of Utility.

(d) Class D. Industrial Service

CLASS D

INDUSTRIAL SERVICE

APPLICABILITY:

Applicable to customers using 3-phase lines and who have demand greater than 1000 kW per month.

TYPE OF SERVICE:

Sixty cycle, three-phase, at the Utility’s standard voltage.

PRIMARY METERED SERVICE RATES & CHARGES:

The primary metered services rates and charges applicable to customers in Class D are as follows:

- (a) Monthly customer service charge
- (b) Base Energy Rate
- (c) Demand Charge
- (d) Variable Fuel Surcharge, and
- (e) Power Factor Charge

Monthly Customer Service Charge

\$25.00 per month

Base Energy Rate

Same as the secondary metered service base energy rate less a reduction of 3.5%.

Demand Charge

Same as the secondary metered service base energy rate less a reduction of 3.5%.

Variable Fuel Surcharge

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

Power Factor Charge:

When the electricity delivered to the customer has an average monthly power factor of less than 0.95, the Utility may, at its sole discretion, install reactive kVArh meters and increase the demand charge by a power factor charge as set forth in section 12.0234 of this chapter.

SECONDARY METERED SERVICE RATES & CHARGES:

The secondary metered services rates and charges applicable to customers in Class D are as follows:

- (a) Monthly customer service charge
- (b) Base Energy Rate
- (c) Demand Charge
- (d) Variable Fuel Surcharge, and
- (e) Power Factor Charge

Monthly Customer Service Charge

\$25.00 per month

Base Energy Rate

First 1,000,000 kWh per month: \$0.0700 per kWh for all kWhs used (“Tier 1”).

Over 1,000,000 kWh per month: \$0.0650 per kWh for all kWhs used (“Tier 2”).

Demand Charge

8.25 per kW per month of billing demand

Billing demand is defined as maximum demand (kW)

Variable Fuel Surcharge

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

Power Factor Charge:

When the electricity delivered to the customer has an average monthly power factor of less than 0.95, the Utility may, at its sole discretion, install reactive kVArh meters and increase the demand charge by a power factor charge as set forth in section 12.0234 of this chapter.

DELIVERY POINT:

The above rates are based upon the supply of service to the entire premises of the customer through a single delivery and metering point at three phase voltage, 60 cycles at the Utility’s standard voltage. Separate supply for the same customer at other points of consumption or meters or at a different voltage shall be separately metered and billed.

PAYMENT:

Above rates are met, the gross bill being 5% higher. In the event the current bill is not paid by the due date specified in the bill, the gross rate shall apply.

SERVICE CONDITIONS:

Service is subject to the rules of Utility

- (e) Class E. Standby Service – Large General Service

CLASS E STANDBY

SERVICE

LARGE GENERAL SERVICE

APPLICABILITY:

Applicable to standby or breakdown service for non-residential customers using three-phase lines, who have a demand greater than 100kW per month, and where all or part of the customer’s electrical requirements on the customer’s premises are supplied by a source of generation other than the Utility’s. This section is not meant to apply to Class C customers with backup or reserve generators who periodically disengage from the Utility’s system to test or perform routine maintenance on their backup power source.

TYPE OF SERVICE:

Sixty cycle, single-phase or three-phase, at the Utility’s standard voltage.

SECONDARY METERED SERVICE RATES & CHARGES:

The rates and charges applicable to the customer in Class E are as follows:

- (a) Monthly customer service charge
- (b) Standby Charge or Demand Charge
- (c) Base Energy Rate
- (d) Variable Fuel Surcharge
- (e) Power Factor Charge

Monthly Customer Service Charge

\$25.00 per month

Standby Charge

\$5.00 per kW per month

Standby capacity is based on the customer's highest maximum demand recorded by the Utility. Standby capacity is subject to the Utility's review and may be increased or decreased at the sole discretion of the Utility based on changes in the customer's maximum demand. The customer may request to enter into a power sales agreement with the Utility in order to reserve standby capacity.

Base Energy Rate

\$0.0876 per kWh per month for all kWhs used.

Demand Charge

\$5.00 per kW per month of billing demand. Billing demand is defined as maximum demand (kW).

Variable Fuel Surcharge

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

Power Factor Charge:

When the electricity delivered to the customer has an average monthly power factor of less than 0.95, the Utility may, at its sole discretion, install reactive kVARh meters and increase the demand charge by a power factor charge as set forth in section 12.0234 of this chapter.

MAXIMUM DEMAND:

"Maximum demand" is the average kilowatt delivery during the 15-minute period in which the consumption of energy is greatest during the month for which the determination is made. The maximum demand shall normally be determined by a recording demand meter. In the absence of such demand meter, or if the meter fails to register, the maximum demand shall be estimated from the best information available.

DELIVERY POINT:

The above rates are based upon the supply of service to the entire premises of the customer through a single delivery and metering point at three phase voltage, 60 cycles at the Utility's standard voltage. Separate supply for the same customer at other points of consumption or meters or at a different voltage shall be separately metered and billed.

PAYMENT:

Above rates are met, the gross bill being 5% higher. In the event the current bill is not paid by the due date specified in the bill, the gross rate shall apply.

SERVICE CONDITIONS:

Service is subject to the rules of Utility.

(f) Class F. Standby Service – Industrial Service

CLASS F STANDBY

SERVICE INDUSTRIAL

SERVICE

APPLICABILITY:

Applicable to standby or breakdown service for non-residential customers using three-phase lines, who have a demand greater than 1000 kW per month, and where all or a part of the customer's electrical requirements on the customer's premises are supplied by a source of generation other than the Utility's.

PRIMARY METERED SERVICE RATES & CHARGES:

The primary metered service rates and charges applicable to the customer in class F are as follows:

- (a) Monthly Customer Service Charge,
- (b) Standby Charge,
- (c) Base Energy Rate,
- (d) Demand Charge,
- (e) Variable Fuel Surcharge, and
- (f) Power Factor Charge

Monthly Customer Service Charge

\$25.00 per month

Standby Charge

\$8.25 per kW per month

Standby capacity is based on the customer's highest maximum demand recorded by the Utility. Standby capacity is subject to the Utility's review and may be increased or decreased at the sole discretion of the Utility based on changes in the customer's maximum

demand. The customer may request to enter into a power sales agreement with the Utility in order to reserve standby capacity.

Base Energy Rate

Same as the secondary metered service base energy rate less a reduction of 3.5%.

Variable Fuel Surcharge

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

Demand Charge

Same as the secondary metered service demand charge less a reduction of 3.5%.

Power Factor Charge:

When the electricity delivered to the customer has an average monthly power factor of less than 0.95, the Utility may, at its sole discretion, install reactive kVArh meters and increase the demand charge by a power factor charge as set forth in section 12.0234 of this chapter.

SECONDARY METERED SERVICE RATES & CHARGES:

The secondary metered service rates and charges applicable to the customer in class F are as follows:

- (a) Monthly Customer Service Charge,
- (b) Standby Charge,
- (c) Base Energy Rate,
- (d) Demand Charge,
- (e) Variable Fuel Surcharge, and
- (f) Power Factor Charge

Monthly Customer Service Charge

\$25.00 per month.

Standby Charge:

\$8.25 per kW per month.

Standby capacity is based on the customer's highest maximum demand recorded by the Utility. Standby capacity is subject to the Utility's review and may be increased or decreased at the sole discretion of the

Utility based on changes in the customer's maximum demand. The customer may request to enter into a power sales agreement with the Utility in order to reserve standby capacity.

Base Energy Rate:

First 1,000,000 kWh month: \$0.0700 per kWh for all kWhs used ("Tier 1").

Over 1,000,000 kWh per month: \$0.0650 per kWh for all kWhs used ("Tier 2").

Demand Charge:

\$8.25 per kW of billing demand.

Billing demand is define maximum demand (kW).

Variable Fuel Surcharge:

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

Power Factor Charge:

When electricity delivered to the customer has an average monthly power factor of less than 0.95, the Utility may, at its sole discretion, install reactive kVArh meters and increase the demand charge by a factor charge as set forth in section 12.0234 of this chapter.

MAXIMUM DEMAND:

“Maximum demand” is the average kilowatt delivery during the 15-minute period in which the consumption of energy is greatest during the month for which the determination is made. The maximum demand shall normally be determined by a recording demand meter. In the absence of such demand meter, or if the meter fails to register, the maximum demand shall be estimated from the best information available.

DELIVERY POINT:

The above rates are based upon the supply of service to the entire premises of the customer through a single delivery and metering point at three phase voltage, 60 cycles at the Utility’s standard voltage. Separate supply for the same customer at other points of consumption or meters or at a different voltage shall be separately metered and billed.

PAYMENT:

Above rates are met, the gross bill being 5% higher. In the event the current bill is not paid by the due date specified in the bill, the gross rate shall apply.

SERVICE CONDITIONS:

Service is subject to the rules of Utility.

(g) Class G. Unmetered Small General Service.

CLASS G

UNMETERED SMALL GENERAL SERVICE

APPLICABILITY:

Applicable to the equipment, fixtures, appliances or facilities of customers using singlephase lines with a demand of less than 1 kW per month, that are connected to the Utility's system, including, but not limited to, small usage equipment, appliances, or facilities, repeaters, power supplies, neon lights, and illuminated signs.

TYPE OF SERVICE:

Sixty cycle, single phase, at the Utility's standard voltage.

RATES & CHARGES:

The rates and charges applicable to the customer in class G are as follows:

- (a) Monthly Customer Service Charge,
- (b) Base Energy Rate, and
- (c) Variable Fuel Surcharge.

Monthly Customer Service Charge:

\$5.00 per month.

Base Energy Rate:

\$0.1045 per kWh per month for all kWhs used.

The total number of kWhs used is determined solely by the Utility based on the Utility's standard formula for determining kWh usage:

kWh usage =

Volt. x current x 24 hours x monthly base energy rate x # of days per billing cycle

1000

Variable Fuel Surcharge:

A variable fuel surcharge as set forth in section 12.0229 of this chapter shall apply.

SINGLE POINT DELIVERY:

The above rates are based upon the supply of service to the entire premises through a single meter at single phase voltage. Separate supply for the same customer at other points of consumption or meters or at a different voltage shall be separately metered and billed.

PAYMENT:

The current bill is due on the due date specified in the bill.

SERVICE CONDITIONS:

Service is subject to the rules of the Utility.

(h) Class H. Outdoor Lighting

CLASS H

OUTDOOR LIGHTING

APPLICABILITY:

Applicable to outdoor lighting connected directly to the Utility's system, typically referred to as street lighting.

RATES & CHARGES:

The rates and charges applicable to the customer with lighting in class H are as follows:

(a) Monthly Rates.

Monthly Rates:

Type	Monthly Rate	Description
NSTL	\$35.00	Illuminated Sign
Streetlight 70S	\$7.50	70W Sodium Vapor Light
Streetlight 100	\$10.50	100 Watts Light
Streetlight 170M	\$18.50	170W Mercury Vapor Light
Streetlight 250	\$27.00	250 Watts Light
Streetlight 400	\$43.00	400 Watts Light

History: Schedule A. eff 1 Jan 75; continued as result of Rule 4-80. eff 1 Apr 80 (modified 12 Jun 80 after further hearing); and Rule 17-83. eff 6 Sept 83. (part);

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and Rule 4-86. eff .2 Dec 86. § 5, and Rule 1-87. eff 4 Mar 87. § 1; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0231 Schedule A-Residential service.

All fees for products or services described in this section must be prearranged with the Utility and prepaid by the customer. The listing of a fee within section does not guarantee availability of the associated service.

Service	Applicable Customer Class	Amount
Deposit	A	\$ 75.00
Deposit	B	\$ 500.00
Deposit	C & E	\$ 1000.00
Single phase electric installation / new connection	A	Conventional meter: \$150.00 initial fee + excess. The Utility subsidizes the first \$1200.00 and the customer is required to pay excess costs over \$1200.00. Prepayment meter: \$300.00 initial fee + excess. The Utility subsidizes the first \$1200.00 and the customer is required to pay excess costs over \$1200.00
Single phase electric installation / new connection	B,C,D, E, & F	\$300.00 initial fee + all excess costs. The Utility provides no subsidy.
3-phase electric installation / new connection	B,C,D, E, & F	\$600.00 initial fee + all excess costs. The Utility provides no subsidy.
Single phase temporary Electric service	A	\$150.00 + all excess costs. The Utility provides no subsidy. Customer is required to pay meter relocation fee + all excess costs at time of relocation

		and installation of permanent meter.
Meter Replacement	All	\$150.00, plus actual costs in excess
Meter Relocation	All	\$50.00 + all excess costs. The Utility provides no subsidy
Temporary Switch for Single Phase	All	\$250.00 + all excess costs
Temporary switch for Threephase	All	\$450.00 + all excess costs
Floodlight rental	All	\$120.00 installation cost plus \$20 per day for usage two (2) floodlights.
Pole rental for banner hanging	All	\$150.00 per week for each banner
Streetlight installation/new connection; power pole already in place	All	\$150.00
Streetlight installation/new connection; power pole required	All	\$300.00 + all excess costs
Illegal Connection or Tampering	A	\$500.00 for first offense, and \$1,000.00 for each following offense
Illegal Connection or Tampering	B,C,D, E, & F	\$1,000.00 for first offense; \$1,500.00 for each following offense
Tampering Reconnection Fee	All	\$100.00 plus estimated kWh usage based on average consumption within customer class
Unmetered usage	ALL	Estimated kWh usage based on average consumption within customer class
Energy audit/meter calibration - single phase	A	Free once per year, \$25.00 per meter thereafter
Energy audit/meter calibration - single phase	B	Free once per year, \$50.00 per meter thereafter

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Energy audit/meter calibration – 3 - phase	B,C,D, E, & F	Free once per year, \$100.00 per meter thereafter
Electric repairs	All	Actual cost to the Utility
Meter reconnection fee	All	\$25.00 , if reconnection fee is paid before 12:00pm on a working day, if after 12:00pm on working day or after hours reconnection is requested then the fee is \$25.00 plus actual costs
Reconnection to power pole or main line - single phase	All	\$50.00 if past due accounts are brought current within one year of disconnection; otherwise, same as electric installation/new connection
Reconnection to power pole or main line - 3-phase	All	\$100.00
Reconnection after termination of electric facilities	A, B,C,D, & E	Actual costs
Reconnection after termination of electric facilities	F	\$100.00 x highest maximum demand capacity recorded by the Utility; and All costs to reconnect to the Utility's system
Returned/bounced check	All	\$30.00
Damage to ASPA facilities or property	All	Actual costs to the Utility for materials, labor, overtime, equipment, rentals, line tucks, backhoes, etc.
Utility's loss of income due to accident/damage	All	Total costs of energy lost, assessed on loss of load at time of incident until power is restored, and including

		actual costs of material, equipment and labor used in restoration of power.
Power line extensions	All	Actual costs to the Utility for materials, labor, overtime, equipment, rentals, line trucks, backhoes, etc.
Specialized personnel services	All	\$35.00 per hour per technician
Prepayment meter to conventional meter conversion	All	\$50.00 plus special deposit
Conventional meter to prepayment meter conversion	All	\$75.00 no deposit for prepayment conversion
Relocation of electric facilities	All	Actual cost, as determined by the Utility
After hours fee	All	\$50.00, in addition to other applicable fees
After-hours vending for prepayment meters	All	\$2.00 per account per vend
Account transfer	All	\$5.00
Utility service upgrade	All	Actual cost
Electric Pause Fee Reconnection	All	\$50.00 for meter installation if service line. meter socket are intact and safe for re-energizing. Building Branch inspection will be required. Considered a new installation if service line and meter socket not intact.

History: Schedule A. eff 1 Jan 75; continued as result of Rule 4-80. eff 1 Apr 80 (modified 12 Jun 80 after further heating); and Rule 17-83. eff 6 Sept 83. (part); and Rule 4-86. eff .2 Dec 86. § 5, and Rule 1-87. eff 4 Mar 87. § 1 ; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0232 **Research and development fund for renewable energy projects.**

- (a) To reduce its dependence on fossil fuels for energy production, the Utility shall establish a research and development fund for renewable energy projects. All revenues collected pursuant to this section shall be deposited in a separate account of the Utility and used exclusively in connection with renewable and/or alternate energy projects of the Utility. An annual accounting of these funds shall be made by the Utility to the Governor and the Legislature on or before the first of October of each year.
- (b) The Utility shall assess, in addition to the rates, charges and fees authorized under sections 12.0230 and 12.0231 of this chapter, an additional base energy rate of \$0.002 per kWh to classes A, B, C, D, E, F, and G to finance the Utility's research and development fund for renewable energy projects unless a specific power purchasing agreement is in effect between customer and the Utility.

History: Rule 4-80, eff 1 Apr 80. Schedule B: and Rule 17-83, eff 6 Sep 83. (part): and Rule 4-86, eff 22 Dec 86. 6: and Rule 1-87, eff 4 Mar 87. § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0233 **Operating, metering and protective relaying for cogenerators and small power producers.**

- (a) Introduction. This section sets forth the minimum requirements for safe and effective operation of customer-owned generation facilities that interface, or have the potential to interfere, in any way with the Utility's electric system. Under normal operating conditions, the Utility controls the only source of supply to a given line and therefore has the responsibility to install equipment which is adequate, under expected circumstances, to detect faulted equipment and de-energize it. Electric generators owned and/or operated by customers of the Utility, that are capable of being connected to the Utility's system or of backfeeding onto the Utility's system through customer circuits, must have adequate protective devices installed.

- (b) Customer Generation. The Utility will permit customers to operate generating equipment in parallel with the Utility's electric system when this can be done without adversely affecting the general public or the Utility's system, equipment, or personnel. Certain protective devices (relays, circuit breakers, etc.) must be installed at any location where a customer has the capability of operating generation equipment in parallel with the Utility's system. The purpose of these devices is to promptly disconnect the customer's generating equipment from the Utility's system whenever faults or abnormal operations occur. The Utility will not be liable for, nor assume any responsibility for protection of the customer's generator(s) or any other portion of the customer's electrical equipment. The customer is fully responsible for protecting his/her equipment in such a manner that faults, outages, surges, and/or other disturbances on the Utility's system do not cause damage to the customer's equipment. The customer may elect to run generation in parallel with the Utility's system or as a separate system with the capability of non-parallel load transfer between the two independent systems. Connection to the Utility's system requires the generation of 60 Hz alternating current.
- (c) Separate Systems. A separate system is defined as a system in which there is no possibility of connecting the customer's generating equipment to or in parallel with the Utility's system. To protect against the possibility of backfeeding onto the Utility's system, the customer shall furnish and install a load break disconnection safety switch on the customer's side of the metering. If the customer's generation unit is capable of isolated operation from the Utility's system, the customer shall furnish and install two such switches. The disconnect switch or switches shall be located adjacent to the Utility's meters and shall be of the visible break type in metal enclosure which can be secured in an open position by the Utility's padlock. The Utility shall have the right to lock such switch or switches open, whenever, in the sole judgment of the Utility, it is necessary to maintain safe electrical operating conditions, or a system emergency or abnormal condition exists. This

switching agreement shall allow the transfer of load between the two systems in an open transition or non-parallel mode. For customers having separate systems the Utility will require verification that the load transfer switching arrangement meets the non-parallel requirements. This verification will be accomplished by approval of drawings by the Utility and/or field inspection of the load transfer switchgear. The Utility will not be responsible for approving the customer's generating equipment and assumes no responsibility for its design or operation. Unless customer generation specifically meets separate system criteria (i.e., cannot backfeed onto Utility system) or an approved non-parallel load transfer switching arrangement is installed, the generation source will be considered capable of backfeeding and will be required to meet the protection specifications for parallel operation.

(d) **Parallel Systems.** Parallel systems are defined as systems in which the customer's generation can be connected to a bus that is common to the Utility's system and wherein a direct transfer of power between the two systems is possible. Customers are required to provide sufficient relaying to detect phase and ground faults in the customer's equipment. This relaying shall coordinate with the Utility's relays.

(1) **Design Requirements.**

- (A) The customer's installation shall meet or exceed all applicable construction and safety codes.
- (B) The customer shall furnish and install a load break disconnect safety switch which shall be of the visible break type in a metal enclosure which can be secured in an open position by the Utility's padlock. The Utility shall have the right to lock such switch or switches open whenever, in the sole judgment of the Utility, it is necessary to maintain safe electrical operating conditions, or a system emergency or abnormal conditions exists.

- (C) The customer shall furnish voltage regulation equipment sufficient to maintain voltage within normal Utility operating limits.
- (D) The Utility reserves the right to require and approve drawing and schematics of the customers interconnecting equipment and the right to conduct field inspection to verify compliance with the approved design.
- (E) The customer shall furnish instrumentation and metering in accordance with these rules and the Utility's operating practices and procedures.
- (F) For customers with the generation facilities that can maintain output when disconnected from the Utility's system, generator breakers or system interface breakers must be equipped with the following appropriately sized and coordinated protection devices:
 - (1) Individual phase over current trip devices for three-phase fault protection;
 - (2) Sensitive ground detection relaying for singlephase-to-ground fault protection (particular attention must be paid to the method of grounding customer generators and Utility transformers (if included in circuit) to be certain that the appropriate relays are installed to detect and clear all Utility and customer ground faults);
 - (3) Under voltage trip devices necessary to protect the Utility's system for low generator output voltage;
 - (4) Underfrequency relays to detect when the customer's generator is supplying the Utility's system in excess of the generator's capacity;

- (5) Overvoltage and/or overfrequency relays to protect the Utility's other customers from overvoltage; and
- (6) Synchronizing equipment to ensure a smooth connection to the Utility's system (synchronizing automatically through check relays is preferred over manual synchronization).
- (G) Customers with generation facilities that cannot maintain output when disconnected from the Utility system are required to equip generator breakers or interface breakers with the following protective devices:
 - (1) Individual phase overcurrent protection for three-phase and phase-to-phase fault protection;
 - (2) Ground fault protection relays for phase-to-ground fault protection; and
 - (3) Underfrequency, overfrequency, undervoltage, and overvoltage relays to protect the Utility's system if the induction generator separates from the Utility's power source at a point between the customer's main breaker and the Utility's substation. Induction generators could become self-excited from the Utility's line capacitors or customer's capacitors, causing excessively high or low voltage and subsequent damage to customer equipment (note: for small induction generators generating less than 50kW, the relays in subsection (d)(1)(G)(1) above are not required due to the fact that generators of this size would not normally supply sustained overcurrents).
- (2) Operating Requirements.
 - (A) The customer must maintain the service voltage within the normal limits of the Utility. If high or low voltage complaints or flicker complaints result from operating the customer's generator, the Utility shall disconnect the customer's generating equipment until the problem is resolved.
 - (B) The customer's generator must not be reconnected in parallel with the Utility's system after a protection device trip due to Utility line trouble until the Utility has corrected the problem and energized the Utility's line to the customer's main breaker. During the period of Utility line trouble, the customer may operate the generator isolated from the Utility.
 - (C) The customer must notify the Utility before operating any generating of a significant size (as established by the Utility) in parallel. This notification shall be made before each connection and disconnection.
 - (D) The customer shall be required to discontinue parallel operation during maintenance or repair to Utility facilities.
 - (E) The customer shall be fully liable and responsible for damage caused to other customers or the Utility as a result of malfunction of the customer's generator or controls.
 - (F) The customer shall indemnify and hold harmless the Utility for any and all damage caused to third parties as a result of the customer's negligence and/or malfunction of the customer's generator(s), controls.
 - (G) The customer shall be required to contact the Utility before reconnecting the generator to the Utility's system on occasion when it has been disconnected by the protective relays due to abnormal conditions.

- (H) All protective devices used by the customer and required by the Utility shall be tested by qualified Utility personnel at frequent intervals specified by the Utility. A fee for such testing shall apply.
- (3) Utility Considerations for Parallel Operation.
- (A) The operation of the customer's generation in parallel with the Utility makes backfeeding a distinct possibility. Protective devices incorporated onto the customer's equipment cannot be relied upon to prevent backfeed during faults on the Utility line connected to the customer. Backfeeding will also occur whenever the customer's generation exceeds the load.
- (B) Utility Design Requirements.
- (1) The Utility shall, at its sole discretion, have the ability and right to disconnect the customer's generation at the customer/Utility interface whenever necessary.
- (2) Transformers feeding customer systems with parallel generation should be identified with a special tag attached to the transfer or pole. This will notify field crews of the possibility of backfeed.
- (3) All maps or diagrams used by the system operator to direct switching operation should have sources of parallel generation identified.
- (4) At the discretion of the Utility, a supervisory control and monitoring system may be incorporated for those customers with large generators.
- (5) The Utility's distribution feeders automatically reclose following a line trip-out. To prevent damage to the customer's generating equipment, some form of reclose blocking or sync-check must be provided to block both automatic and manual reclosing until the customer's generating unit has separated from the line. This equipment shall be provided at the customer's sole expense.
- (6) The connection of interfacing transformers between the customer and Utility, if required, should be given considerable attention. The relaying requirements and system operating characteristics can be greatly affected by the connection.
- (7) The preferred transformer connection, from a Utility relaying standpoint, is for the interface transformer to be connected delta on the generator side and grounded wire on the Utility side. An overcurrent relay connected to a current transformer in the high voltage neutral will provide sensitive ground relaying for line-to-ground faults on the Utility system. Delta connected windings on the customer's side may be objectionable because it leaves the customer's system ungrounded.
- (C) Utility Operation Procedures.
- (1) To maintain safe working conditions, strict adherence to these rules and the Utility's safety rules shall be required. Utility manuals for line crews must include safe working procedures applicable to parallel generation operation.
- (2) The Utility may exercise direct control over customer generation that is of sufficient magnitude to

affect Utility generation and/or voltage regulation.

- (3) The Utility shall have discretionary control over all of a customer's parallel generation — no matter what the size — during outages, equipment maintenance and emergencies.

History: Rule 4-80. eff 1 Apr 80, Schedule LPI; and Rule 17-83. eff 6 Sep 83. (part); and Rule 1-87.4 Mar 87. § 3; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0234 Power factor charge.

At the Utility's sole discretion, kVARh metering will be installed on the service of any new customer whose demand is expected to exceed 25 kilowatts and upon the service of any existing customer whose demand has exceeded 25 kilowatts for three consecutive months. When such power factor metering is installed on a customer's service, the total billed demand charge for any month's electric service shall be increased, according to the following formula:

$$\text{Billed Demand} = \frac{\text{Measured kW demand} \times \text{Allowable P.F.}}{\text{Average P.F.}}$$

[The ratio of Allowable PF over Average PF multiplied by the Measured (Max) kW Demand] Allowable P.F. 95%

Average power factor to be computed (to the nearest whole percent) from the ration of lagging kilovolt-ampere-hours to kilowatt-hours consumed during the month as follows:

$$\text{Average P.F.} = \frac{\text{Customer kWh}}{\sqrt{[(\text{Customer kWh})^2 + (\text{Customer kVARh})^2]}}$$

Before installing kVARh metering on an existing customer's service, the Utility will measure the customer's power factor and notify the customer of the result of the measurement. The customer shall then be allowed 60 days to enter into a mutually agreed upon power factor correction program. The program shall be based on the Utility's dollar estimate of the annual potential penalty. The customer shall agree to install power factor corrective devices on

customer's system equivalent to the annual dollar value of the Utility's estimate of the power factor penalty. This program shall continue in effect until the customer's power factor reaches 95% or better for six (6) consecutive months, or one (1) year maximum time has elapsed. The power factor clause shall then become effective on the customer billing. During the time this agreement is in effect, the Utility shall not impose any other power factor penalty on the customer. If the above agreement is not implemented, kVARh metering shall be installed and the customer shall be billed in accordance with the above provisions.

History: Rule 4-86. eff 22 Dec 86, § 7; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0235 Violations

- (a) The Utility reserves the right to refuse service to any customer that does not comply with the rules set forth in this chapter.
- (b) If any person or entity responsible for complying with the provisions of this chapter violates any such provision, the Utility shall notify that person or entity in writing of said violation(s) and order that person or entity to correct the said violation(s). The Utility shall be entitled to assess fees and charges at its discretion, pursuant to this chapter.
- (c) Notices of violations shall be served in person, posted upon the premises in a prominent place, or via first class mail to the account holder.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0237 Authority to adjust rates.

The Board of Directors of the American Samoa Power Authority may, by formal resolution adopted in accordance with its bylaws, adjust (reduce or increase) one or more rates, charges, and/or fees codified in sections 12.0230 and

12.0231, provided that such adjustment or adjustments do not exceed publicly filed rates, charges, and/or fees adopted under A.S.C.A. 515.0102 and the Administrative Procedure Act, A.S.C.A. 4.1001 et. seq. The Board, at a minimum,

shall review the rate in the first quarter of each calendar year.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0238 Severability.

If any section, subsection, sentence, clause, phrase, provision, or application of this chapter for any reason is held invalid, such invalidity shall not effect the validity and/or application of the remainder of this chapter as a whole or any part thereof other than the part so held invalid.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0239 Effective date.

This chapter and all the provisions contained herein shall take effect upon compliance with Administrative Procedures Act, A.S.C.A. and A.S.C.A. 4.1020(b).

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

TITLE 12 – CHAPTER 03 –
WATER/WASTEWATER

Sections:

- 12.0300 Definitions.
- 12.0301 Service generally.
- 12.0302 Customer accounts.
- 12.0303 Service connections and installation.
- 12.0304 Septic systems.
- 12.0305 Backflow prevention required.
- 12.0306 Valves required.
- 12.0307 Easement requirement.
- 12.0308 Voluntary discontinuance of service.
- 12.0309 Temporary service.
- 12.0310 Limits of liability.
- 12.0311 Repairs.
- 12.0312 Meters.
- 12.0313 Delivery point.
- 12.0314 Delivery point — Designation — Anchorage for connections.
- 12.0315 Rate schedule.
- 12.0316 Variable pumping surcharge.
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- 12.0318 Bills and payment.
- 12.0319 Termination and reconnection.
- 12.0320 Multiple units.

- 12.0321 Marine vessels.
- 12.0322 Fire hydrants.
- 12.0323 Prohibited acts.
- 12.0324 Damage to Utility property.
- 12.0325 Excessive or large demands; waste.
- 12.0326 Maintenance.
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- 12.0329 Land use restrictions.
- 12.0330 Rules for elevated lots.
- 12.0331 Wells.
- 12.0332 Violations.
- 12.0333 Noncompliance charge.
- 12.0334 Authority to adjust rates.
- 12.0335 Severability.
- 12.0336 Effective date.

Editors Note: All Sections of Chapter 3, Title 12 as provided for in Rule 11-81, eff 1 Aug 81, has been repealed and amended in its entirety to the current Sections as provided for in Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

I. GENERAL PROVISIONS

12.0300 Definitions

- (a) "Approved backflow prevention assembly," as used in this chapter, is defined as a reduced pressure backflow assembly (RPBA), a reduced pressure detector assembly (RPDA), a double check valve assembly (DCBA or DCVA), or a pressure vacuum breaker that is approved by the Utility. Approved backflow prevention assemblies are required by the Utility for the protection of the public water system. Approved backflow prevention assemblies are found in the current approved backflow prevention assemblies list developed by the University of Southern California Foundation for Cross-Connection Control and Hydraulic Research or such other entity acceptable to the Utility.
- (b) "Backflow," as used in this chapter, is defined as a reverse flow that causes used water, non-potable water, or other substances from any source to flow into the Utility's service line and/or customer's water supply. For purposes of this chapter, backflow also refers to and includes "back siphonage," which is backflow due to a

reduction in system pressure in the Utility's water system.

- (c) "Cross-connection," as used in this chapter, is defined as any actual or potential unprotected physical connection or structural arrangement between the Utility's service line and that of any other source or system, whether private water system, other water or chemical supply system, disposal system, process waters, or other system through which it is possible to introduce into any part of the potable system any used water (such as water used on the customer's premises, by the customer for any reason, or which has been located at any time within the customer's piping), industrial fluids, gas, or substance other than the intended potable water with which the potable system is supplied. Bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary devices, through which or because of which backflow can or may occur, are also considered to be cross-connections.
- (d) "Customer(s)," as used in this chapter, is defined as any person, entity, government agency, church, or individual, whether residential, commercial, or industrial, to whom or which the Utility has provided, or continues to provide, water or wastewater service or a connection thereto.
- (e) "Customer point of discharge demarcation," as used in this chapter, is defined as the specific point on the customer's service line which is ten feet from the Utility's wastewater main line. Customers are responsible for the service line from the premises to the customer point of discharge demarcation.
- (f) "Delivery point," as used in this chapter, is defined as the farthest point to which the Utility will extend water service, which point, unless otherwise specified or consented to by the Utility, shall be the Utility's water meter.
- (g) "Discharge point," as used in this chapter, is defined as the point at which the wastewater leaves the customer's control and enters the Utility's wastewater system, which shall be the Customer Point of Discharge Demarcation.
- (h) "Industrial customer(s)," as used in this chapter, is defined as an industrial customer, as set forth in A.S.A.C. 12.0230(d) and (f).
- (i) "Infrastructure," as used in this chapter, is defined as equipment and facilities necessary to provide water and wastewater service to the people to American Samoa, including, but not limited, to water service system pipes, fittings, conduits, sewer service system pipes, main lines and laterals.
- (j) "Large general service customer," as used in this chapter, is defined as a large general service customer, as set forth in A.S.A.C. 12.0230(c) and (e).
- (k) "Multi dwelling unit," as used in this chapter, is defined as a structure or a property which has two or more units occupied by different tenants with one water meter.
- (l) "Pumping Surcharge Coefficient," as used in this chapter, is defined as a constant factor of 0.20.
- (m) "Pumping Surcharge Multiplier," as used in this chapter, is defined as a constant factor of 5.
- (n) "Residential," as used in this chapter, is defined as an individual or family occupying a residential dwelling unit or single family home and has no significant producing or processing activity of a commercial or industrial nature, and includes all customers in Class A as defined in section 12.0230(a) ASAC.
- (o) "Septic system," as used in this chapter, is defined as any watertight receptacle which receives discharge of domestic sewage that is designed and/or constructed so as to retain solids, digest organic matter through a period of detention, and discharge liquids into a subsurface disposal field or one or more seepage pits.
- (p) "Sewage," as used in this chapter, is defined as water-carried human waste from residences, building, industrial establishments, or other places, together with such ground water infiltration and surface water as may be present.

- (q) "Small general service customer," as used in this chapter, is defined as a small general service customer as set forth in A.S.A.C. 12.0230(b).
- (r) "Terminate facilities" or "termination of facilities," as used in this chapter, is defined as the complete removal of the Utility's meter, metering equipment and facilities, and any and all Utility facilities from the premises of the customer.
- (s) "Terminate service" or "termination of service," as used in this chapter, is defined as the disconnection of service by means of removal of a meter, but does not mean termination of electrical facilities.
- (t) "Utility," as used in this chapter, is defined as the American Samoa Power Authority.
- (u) "Variable Fuel Surcharge," as used in this chapter, is defined as the Variable Fuel Surcharge as defined and calculated by section A.S.C.A. 12.0229.
- (v) "Wastewater," as used in this chapter, is defined as sanitary waste or used water from any building or structure, including but not limited to, sewage, shower, and wash water, and any associated solids or combinations of these, whether treated or untreated, together with such water as is present.
- (w) "Wastewater service," as used in this chapter, is defined as wastewater services provided by the Utility and services performed by the Utility in connection with providing wastewater facilities to customers.
- (x) "Water service," as used in this chapter, is defined as potable water provided by the Utility and services performed by the Utility in connection with providing water to customers.
- (y) "Water service connection," as used in this chapter, is defined as the pipes, valves and other facilities through which the Utility conducts water from its distribution mains to and through the customer's delivery point.
- (z) "Watershed," as used in this chapter, is defined as an area in which the Utility finds that groundwater and/or surface water must be

regulated and protected for its best utilization, conservation, and protection in order to prevent threat of exhaustion, depletion, contamination, waste, pollution, or deterioration by salt encroachment.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981)

12.0301 Service generally.

- (a) The Utility shall have charge of and shall administer the collection, production, storage, distribution, and sale of potable water. The Utility will endeavor to deliver a continuous supply of safe, potable water and to avoid any shortage or interruption in the delivery, so long as water rights or capacity are sufficient for delivery to be made in a safe and reliable manner, delivery is economically reasonable or otherwise practicable, and delivery is consistent with the requirements of applicable rules and regulations, all as determined by the Utility.
- (b) The Utility shall also take charge of and administer the collection of wastewater. The Utility will endeavor to ensure a safe and sanitary collection of wastewater via the Utility's wastewater system.
- (c) The rules and regulations herein govern the construction, modification, replacement, and operation of potable water and wastewater systems within the Territory. Its provisions shall be liberally construed for the accomplishment of these purposes.
- (d) Nothing in this chapter shall be construed as relieving a customer, owner, or possessor of premises from the obligation of complying with any other laws, regulations, orders, or requirements which may be applicable. The enactment of this chapter does not create any specific rights to products or services. All products or services mentioned or listed in this chapter are provided by the Utility at the Utility's sole discretion.
- (e) The Utility provides service and facilities only as far as the delivery point or from the discharge point. All water services shall be metered.

History: Rule 11-81, eff 1 Aug 81, Art. 1 § 1; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0302 Severability.

All customers of the Utility with a water service connection to the Utility's water system, shall also have a wastewater connection and all customers shall be responsible for paying all corresponding rates and fees as described and set forth in this chapter.

History: Rule 11-81, eff 1 Aug 81, Art. 1 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0303 Service connections and installations.

(a) Wherever the Utility is capable of connecting a customer to the wastewater system, such connection is mandatory in order to protect the groundwater supply. Wastewater service shall be provided up to the customer point of discharge demarcation. The Utility shall install a wastewater service connection of such size and at such location as the applicant requests, provided that the Utility finds that such request is reasonable under the circumstances and complies with applicable building laws, codes, and permits. The Utility shall not connect or allow connection of storm water or any similar water runoff into the wastewater system. The Utility shall have no responsibility to own, construct, operate, repair, or maintain any facilities or equipment on the customer's side of the customer point of discharge demarcation. Only duly authorized employees or agents of the Utility shall be permitted to install a wastewater service connection from the customer's premises to the Utility's wastewater system.

(b) The Utility shall install a water service connection of such size and at such location as the applicant requests, provided that the Utility finds that such request is reasonable under the circumstances and complies with applicable building laws, codes, and permits. Water service shall be provided to the delivery point. The Utility shall have no responsibility to own, construct, operate, repair, or maintain any facilities, appliances, or equipment beyond the delivery point. Only duly authorized employees

or agents of the Utility shall be permitted to install a water service connection.

- (c) All connections for water service, permanent and temporary, between the Utility's piping and the meter shall be made by the Utility. All connections to the wastewater system, permanent and temporary, between the Utility's wastewater system and the customer point of discharge demarcation shall be made by the Utility. The Utility will not permit or tolerate unauthorized connections.
- (d) Customers must make written applications for water and wastewater service and execute the Utility's standard form(s) when the Utility determines it to be necessary. Customers shall also pay the necessary deposits and connection fees. No application is complete until all payments have been made and the Utility's standard form(s) have been executed.
- (e) In the case of rented or leased property, for all customer classes, the landlord or owner of said property must co-sign for the tenant or renter on the initial application or transfer of an account. Cosigners shall be held financially responsible for payment of any past due utility bills of the tenant. This applies to all rate classes. Utility service will be disconnected and not be restored until payments or a payment plan is made to resolve past due utility accounts.
- (f) No promise, agreement, or representation of any employee or agent of the Utility, with reference to furnishing a connection, shall be binding upon the Utility unless it is authorized by the Chief Executive Officer and Chief Operations Officer.

History: Rule 11-81, eff 1 Aug 81, Art. 1 § 3; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0304 Septic systems.

(a) Septic systems shall be installed only when the Utility determines it to be impossible or impracticable to be connected to the Utility's wastewater system. Upon installation and commissioning, septic systems installed by the Utility become the property of and are the responsibility of the customer. The Utility shall solely be responsible for determining whether a

septic system can feasibly be installed, taking into account necessary setback requirements, surface slope, soil characteristics, and other factors. New or replacement septic systems shall meet all the requirements for new septic systems.

- (b) The septic tank shall be large enough for the discharge of wastewater based upon the number of residents or occupants of the structure. It shall be watertight and constructed of solid, durable materials not subject to excessive corrosion or decay. It shall be designed to produce a clarified effluent and provide adequate space for sludge and scum accumulation. It shall be manufactured to meet all necessary environmental standards and shall be structurally designed to withstand all anticipated earth or other loads.
- (c) Septic systems shall not be installed if installation could contaminate a source of drinking water. Upon installation of a septic system, the customer must perform necessary maintenance in order to assure proper operation of the system, including but not limited to periodic pumping, inspecting, cleaning, and replacing components.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 1; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0305 Backflow prevention required

- (a) As a prerequisite to receiving water service, all residential customers shall install, at the customer's expense, a Utility approved dual check backflow prevention device on the discharge side of the new water meter within the meter box. All small general service and large general service customers shall install Utility-approved backflow prevention assemblies on all water supply lines from the Utility.
- (b) Only approved backflow prevention assemblies shall be installed. All approved backflow prevention assemblies or protection against backflow installed or paid for by the customer shall be maintained in good working condition by the customer. Such devices must be tested and approved for service by a certified backflow assembly tester at the time of installation. All backflow prevention assemblies must be tested

and approved for service on an annual basis by a certified backflow assembly tester. The Utility reserves, at the expense of the customer, the right to unlimited access to backflow prevention assembly installations if they are replaced or repaired. No device or assembly shall be removed from use or relocated or other device or assembly substituted, without the approval of the Utility.

- (c) In special circumstances or when the customer is engaged in the handling of especially dangerous or corrosive liquids, or industrial or process waters, the Utility may require the customer to eliminate certain plumbing or piping connections as an additional precaution to prevent backflow, back-siphonage, or cross connections. In making required plumbing connections the customer shall comply entirely with the latest edition of the Universal Plumbing Code and relevant local building codes.
- (d) All fire hydrant usage shall require a backflow prevention assembly.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0306 Valves required.

- (a) As a protection for the customer's plumbing system, a suitable pressure relief valve must be installed and maintained by the customer, at the customer's expense, when check valves or other protective devices are used. The relief valve shall be installed between the check valves and the water heater.
- (b) The customer shall install a suitable control valve, as close to the meter location as practicable, the operation of which will control the entire water supply from the service.
- (c) Two or more services supplying water from different street mains to the same building structure or premises, through which an inter-street main flow may occur, shall have a Utility-approved backflow prevention assembly installed on each water service. The Utility requires a backflow prevention assembly for all families with village and Utility water systems, for all commercial service installations, and for

residential service customers that violate Utility rules.

- (d) Where reduced or increased pressure is desired, the customer shall be responsible for installing and maintaining all necessary pressure regulator valves, booster pumps, and relief valves. In all such cases, the equipment shall be installed at the customer's expense and on the customer's side of the delivery point, in such a manner as not to endanger the water system. At the sole determination of the Utility, customers with a booster pump shall, at the customer's expense, install an approved backflow prevention assembly or an air gap system.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0307 Easement requirement.

- (a) To accomplish the Utility's duties and purposes codified in A.S.C.A 15.0102, including the production, distribution, and sale of potable water and wastewater disposal, it is essential that the Utility obtain the right to install and maintain facilities necessary to provide water and wastewater service to the people of American Samoa, including, but not limited, to water service system pipes, fittings, conduits, sewer service system pipes, main lines and laterals. The customer shall execute, or have the property owner execute, the Utility's standard form easement at no cost to the Utility. The Utility or its duly authorized agents shall at all reasonable times have the right to enter and remain on the customer's premises for any purpose properly connected with the service, connection, or termination of water or wastewater to any customer.
- (b) The area of the Utility's easement shall be equal to the minimum required clearance or setback as determined by the Utility for that particular piece of equipment or infrastructure. Damaging Infrastructure within the easement, or encroachment upon the Utility's easement or interference with the Utility's right-of-way granted by this chapter, including, but not limited to, erecting buildings, structures, or improvements upon the Utility's easement and right of way is prohibited. If the landowner

damages or causes damage to Infrastructure within the easement, or constructs or causes the construction of buildings, structures, or improvements upon or within the Utility's easement in violation of this chapter, the landowner shall reimburse the Utility for any and all expenses associated with or arising from replacing the Utility's Infrastructure, relocating the Utility's Infrastructure, or removing the building, structure, or improvement, whichever the Utility deems to be in its best interest. Infrastructure replacement or relocation costs shall include, but are not limited to those specified in section 12.0317 of this chapter. Any costs required to remove the landowner's building, structure, or improvement shall be borne by the landowner.

- (c) The customer shall not bury or cause to be buried, either permanently or temporarily, the water meter or other above-ground Utility infrastructure. Customers shall pay an access fee as set forth in this chapter to uncover buried or inaccessible meters or other Utility infrastructure.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0308 Voluntary discontinuance of service.

- (a) A customer may not voluntarily discontinue wastewater service. A customer may have his or her water service discontinued by notifying the Utility at least thirty (30) days in advance of the desired date of discontinuance. The customer will be required to pay all water charges until the date of such discontinuance. If the customer fails to provide notice as required by this section, the customer will be required to pay for water service for thirty (30) days after the Utility has learned that the customer has vacated the premises or otherwise has discontinued service.
- (b) The Utility will not disconnect customers from the wastewater system, except for extreme emergency situations.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0309 Temporary service.

Temporary water service and/or wastewater service may be obtained by making arrangement for such service with the Utility. Rates, charges, and fees for water furnished through a temporary service connection will be in accordance with this chapter, including but not limited to sections 12.0315 through 12.0317.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0310 Limits of liability.

- (a) The Utility will endeavor to provide potable water and an outlet for wastewater removal on a continuous and uninterrupted basis. The Utility will not be liable, except in cases of gross negligence or negligent workmanship by the Utility, for any damages the customer may sustain by reason of the failure to provide said service.
- (b) The Utility shall not be liable for interruption, shortage, or insufficiency of water or wastewater service, or for any loss or damage occasioned thereby, if caused by service malfunctions, accident, act of God, fire strikes, riots, war, or any other cause not within the Utility's control. The Utility, whenever it finds it necessary or convenient for the purpose of making repairs or improvements to its system shall have the right temporarily to suspend delivery of water to customers or discharge of wastewater from customers and it shall not be liable for any loss or damage occasioned thereby. Repairs or improvements will be implemented as rapidly as is practicable and, so far as possible, at such times as will cause the least inconvenience to the customers. The Utility will attempt to provide, when practicable and as time permits, notice to customers who may be affected by anticipated service interruptions.
- (c) The Utility shall not be held responsible for loss or damage due to lack of water or lack of water pressure. All connections, pumps, tanks, chlorinators, or filters, between the Utility's meter and the customer's water outlets shall be the sole responsibility of the customer both as to original installation as to maintenance and upkeep. All connections, piping, and/or other

appurtenances installed at any point between the discharge point and the customer's wastewater outlets shall be the sole responsibility of the customer as to original installation and as to maintenance and upkeep.

- (d) The Utility shall not be responsible for any loss or damage caused by the improper installation of such water or wastewater equipment, or the negligence of proper care, or wrongful act of the customer or the customer's tenants, agents, employees, contractors, licensees, or permittees in installing, maintaining, using, operating, or interfering with such equipment. The Utility shall not be responsible for damage to property caused by spigots, faucets, valves, and other equipment that are open when water is turned on at the meter, either when the water is turned on originally or when turned on after a temporary shutdown.
- (e) Nothing in this chapter shall be construed as a contract on the part of the Utility to furnish its water or wastewater services for any definite period of time or as a public Utility in respect to any water or wastewater services furnished outside the Utility.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0311 Repairs.

Any customers experiencing lack of water or wastewater service should first inspect their own facilities to determine whether the lack of service is on the customer's side of the delivery point or the customer point of discharge demarcation. The Utility shall have no responsibility to own, construct, operate, repair, or maintain any facilities, appliances, or equipment on the customer's side of the delivery point for water service or, for wastewater service, the customer point of discharge demarcation.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0312 Meters.

- (a) All water service shall be metered. The installation of the meter shall be made at the sole determination of the Utility, with a Utility

preference that it shall be installed at or near the curb or property line. Meters shall be the property of the Utility. No rent or other charge shall be paid by the Utility for a meter or other water facilities, including any housing or connection apparatus, which may be located on a customer's premises.

- (b) All meters will be sealed by the Utility at the time of installation and no seal shall be altered or broken except by one of its authorized employees or agents.
- (c) Meters relocated by request of the customer or for the convenience of the customer will be relocated at the customer's expense. The customer shall prepay such expense pursuant to the Utility's estimate of the total cost.
- (d) The meter and the meter box or housing will be repaired and maintained by the Utility at its expense, but the Utility is not responsible for the cost of installation. Upon receipt of a request from a customer, the Utility will test a customer's meter, free of charge, for correct calibration once every 365 day period. Any meter shown by test to have an average error of more than five percent (5.0%) will result in an adjustment of the billing for the last billing period. Adjustments shall be based upon the best available data and evidence of the Utility.
- (e) Where a meter cannot be read without undue difficulty because of an obstruction, the customer will be notified and requested to correct the condition. The Utility has the right to discontinue the service if the condition is not corrected. Where service is terminated, the Utility will charge a reconnection fee as set forth in this chapter before restoring service.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0313 Delivery point.

- (a) With the exception of the meter, the Utility shall have no responsibility to own, construct, operate, repair, or maintain any water facilities, appliances, or equipment beyond the delivery point. The delivery point must be approved by

the Utility before building plumbing and wiring is installed.

- (b) The Utility will provide only one water delivery point per building. the building provides for multiple occupancy, the one service per building must supply all meters for all tenants in the building. Should the landlord or building owner desire multiple meters for each tenant, the meters shall be grouped or united at one central point.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0314 Delivery point — Designation — Anchorage for connections.

- (a) Prior to connection, the customer shall ascertain from the Utility to what point on the customer's structure the water service connection will be attached. Upon inquiry by the customer, the Utility will designate a location for the water service connection and the point of attachment to the building. The Utility will assume no responsibility to change the location of its water service connection if an improper location is chosen without consultation with the Utility or if the designated location is not utilized.
- (b) Water service connections shall not interfere with windows, doors, awnings, or other parts of the buildings or be readily accessible to persons at windows and doors or other accessible areas.
- (c) Safe and adequate structures for the water service connections are required of the customer, and in no case will the Utility be responsible for damage to any of the customer's buildings or structures to which water service connections are attached or have been attached.
- (d) Where water service connections are to be connected to building with stucco, hollow tile, brick veneer, plaster, stone coated or sheet iron exteriors, or where there is no surface available that is suitable for the attachment of water service connections, the customer shall ensure that the wall is adequately prepared for the connection.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

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12.0315 Rate schedule.

(a) Residential Service.

APPLICABILITY:

Residential service rates shall be applicable to domestic customers for residential use, where the majority of use is for the personal use and comfort of those residing at the location, and shall include customers in Class A as defined in section A.S.C.A. 12.02306).

RATES AND CHARGES:

The rates and charges applicable to the customer in class A are as follows:

- (a) Monthly Customer Service Charge,
- (b) Base Water Rate,
- (c) Variable Pumping Surcharge, and
- (d) Groundwater Contamination and Protection Charge.
- (e) Groundwater Contamination and Protection Volume Charge for Multi-dwelling.

Monthly Customer Service Charge:

\$14.62 per month. effective and current until September 30, 2017:

\$14.91 per month from October 1, 2017 and until September 30: 2018:

\$15.21 per month from October 1. 2018 and continuing thereafter.

Base Water Rate:

Effective until September 30 2017	
Zero to 10 000 gallons	\$2.81
10,001 to 20,000 Ions	\$3.31
20,001 to 30,000 lions	\$3.81
30,001 gallons and above	\$4.31
Effective October 1 2017 to September 30 2018	
Zero to 10,000 gallons	\$2.87
10,001 to 20,000 gallons	\$3.37
20,001 to 30,000 gallons	\$3.87
30,001 gallons and above	\$4.37
Effective October 1 2018 and continuing thereafter	
Zero to 10,000 gallons	\$2.92

10,001 to 20,000 gallons	\$3.42
20,001 to 30,000 gallons	\$3.92
30,001 Ions and above	\$4.42

Variable Pumping Surcharge:

A variable pumping surcharge as set forth in section 12.0316 of this chapter shall apply.

Groundwater Contamination and Protection Charge:

\$16.25 per month until May 13, 2015;

\$17.06 per month. from May 14. 2015 and until September 30, 2016:

\$20.05 per month, from October 1, 2016 and until September 30, 2017:

\$23.56 per month. from October 1. 2017 and until September 30.2018:

\$24.97 per. month, from October 1, 2018 and continuing thereafter.

Groundwater Contamination and Protection Volume Charge for Multi-dwelling Units with One Water Meter:

\$1.85 per one thousand gallons from May 14, 2015 and continuing thereafter.

DELIVERY POINT:

The above rates are based upon the supply of water service through an individual meter. Separate supply for the same customer at other points of consumption or meters shall be separately metered and billed.

PAYMENT:

The bill is due monthly on the date specified on the bill.

- (b) Small General Service and Large General Service.

APPLICABILITY:

These rates shall be applicable to small and large general service customers, and shall include customers in Classes B, C, and E as set forth in A.S.A.C. 12.0230(b), (c), and (e).

RATES AND CHARGES:

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The rates and charges are as follows:

- (a) Monthly Customer Service Charge,
- (b) Base Water Rate,
- (c) Variable Pumping Surcharge,
- (d) Groundwater Contamination and Protection Charge, and
- (e) Groundwater Contamination and Protection Volume Charge.

Monthly Customer Service Charge:

\$14.62 per month. effective until September 30, 2017:

\$14.91 per month from October 1, 2017 and until September 30, 2018;

\$15.21 per month from October 1, 2018 and continuing thereafter.

Base Water Rate:

\$3.03 per one thousand gallons. effective until September 30, 2017:

\$3.09 per one thousand gallons, from October 1, 2017 to September 30, 2018:

\$3.15 per one thousand gallons. from October 1, 2018 and continuing thereafter.

Variable Pumping Surcharge:

A variable pumping surcharge as set forth in section 12.0316 of this chapter shall apply.

Groundwater Contamination and Protection Charge:

\$16.25 per month until May 13, 2015

\$17.06 per month. from May 14, 2015 and until September 30, 2016:

\$20.05 per month. from October 1, 2016 and until September 30, 2017:

\$23.56 per month, from October 1, 2017 and until September 30, 2018;

\$24.97 per month. from October 1, 2018 and continuing thereafter.

Groundwater Contamination and Protection Volume Charge:

\$1.85 per thousand gallons, until May 13, 2015;

\$1.94 per thousand gallons. from May 14, 2015 to September 30, 2016;

\$2.28 per thousand gallons. from October 1, 2016 to September 30, 2017:

\$2.68 per thousand gallons, from October 1, 2017 to September 30, 2018:

\$2.84 per thousand gallons, from October 1, 2018 and continuing thereafter.

DELIVERY POINT:

The above rates are based upon the supply of water service through an individual meter. Separate supply for the same customer at other points of consumption or meters shall be separately metered and billed.

PAYMENT:

The bill is due monthly on the date specified on the bill.

- (c) Industrial Service.

APPLICABILITY:

These rates shall be applicable to industrial service customers, and shall include customers in Classes D and F as set forth in A.S.A.C. 12.0230(d) and (f).

RATES AND CHARGES:

The rates and charges are as follows:

- (a) Monthly Customer Service Charge
- (b) Base Water Rate, and
- (c) Variable Pumping Surcharge.
- (d) Groundwater Contamination and Protection Charge, and
- (e) Groundwater Contamination and Protection Volume Charge on facility use.

Facility use is defined as the difference between lavatory/internal use and outfall discharge.

Monthly Customer Service Charge:

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\$14.62 per month. effective and current until September 30, 2017;

\$14.91 per month from October 1. 2017 and until September 30, 2018:

\$15.21 per month from October 1, 2018 and continuing thereafter.

Base Water Rate:

\$3.03 per thousand gallons. effective and current until September 30, 2017;

\$3.09 per thousand gallons, from October 1, 2017 to September 30. 2018:

\$3.15 per thousand gallons from October 1, 2018 and continuing thereafter.

Variable Pumping Surcharge:

A variable pumping surcharge as set forth in section 12.0316 of this chapter shall apply.

Groundwater Contamination and Protection Charge:

\$16.25 per month until May 13, 2015

\$17.06 per month. from May 14, 2015 and until September 30, 2016:

\$20.05 per month, from October 1, 2016 and until September 30.2017:

\$23.56 per month, from October 1.2017 and until September 30, 2018:

\$24.97 per month, from October 1. 2018 and continuing thereafter.

Groundwater Contamination and Protection Volume Charge on facility use:

\$1.85 per thousand gallons, until May 13.2015:

\$1.94 per thousand gallons, from May 14, 2015 to September 30, 2016:

\$2.28 per thousand gallons, from October 1, 2016 to September 30, 2017:

\$2.68 per thousand gallons, from October 1 2017 to September 30, 2018:

\$2.84 per thousand gallons, from October 1, 2018 and continuing thereafter.

DELIVERY POINT:

The above rates are based upon the supply of water service through an individual meter. Separate supply for the same customer at other points of consumption or meters shall be separately metered and billed.

PAYMENT:

The bill is due monthly on the date specified on the bill.

(d) Fire Protection.

APPLICABILITY:

These rates are only applicable to water use via a fire hydrant by the American Samoa Fire Protection Services Department or the American Samoa Police department.

RATES AND CHARGES:

The rates and charges applicable to the Fire Protection Service customer are as follows:

- (a) Monthly Customer Service Charge,
- (b) Base Water Rate, and
- (c) Variable Pumping Surcharge.

Monthly_ Customer Service Charge:

\$14.62 per month, effective until September 30.2017:

\$14.91 per month from October 1, 2017 and until September 30, 2018:

\$15.21 per month from October 1.2018 and continuing thereafter.

Base Water Rate:

Effective until September 30 2017	
Zero to 10 000 gallons	\$2.81
10,001 to 20,000 Ions	\$3.31
20,001 to 30,000 lions	\$3.81
30,001 gallons and above	\$4.31
Effective October 1 2017 to September 30 2018	
Zero to 10,000 gallons	\$2.87
10,001 to 20,000 gallons	\$3.37
20,001 to 30,000 gallons	\$3.87
30,001 gallons and above	\$4.37
Effective October 1 2018 and continuing thereafter	

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Zero to 10,000 gallons	\$2.92
10,001 to 20,000 gallons	\$3.42
20,001 to 30,000 gallons	\$3.92
30,001 Ions and above	\$4.42

Variable Pumping Surcharge:

A variable pumping surcharge as set forth in section 12.0316 of this chapter shall apply.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0316 Variable pumping surcharge.

A variable pumping surcharge shall apply to all classes of customers as those classes are set forth in section 12.0315 of this chapter. At a minimum, the variable pumping surcharge shall recover all fuel expenses incurred by the Utility in pumping water each month. The variable pumping surcharge is the monthly fuel surcharge multiplied by the pumping surcharge multiplier, less the pumping surcharge coefficient. The final number is applied to each one thousand (1,000) gallons of water a customer uses.

History: Rule 11-31, eff 1 Aug 81, Art. 2 § 2; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0317 Fee Schedule.

All fees for products or services described in this section must be prearranged with the Utility and prepaid by the customer. The listing of a fee within this section does not guarantee availability of the associated service.

SERVICE	APPLICABLE CUSTOMER CLASS	AMOUNT
New Water Meter Installations	A	All New Water Meter Installations shall require an ASPA Certified Backflow Prevention device and Inspection Fee of \$50.00
New Water Meter Installations	B, C, & D	All New Water Meter Installations shall require an ASPA Certified Backflow

		Prevention device and Inspection Fee of \$75.00.
Water Meter Installation, 5/8" 3/4"	A	\$150.00 up to 100' from water main, actual costs per linear foot thereafter.
Water Meter Installation, 5/8" and 3/4"	B, C, & D	\$250.00 up to 100' from main, actual costs per linear foot thereafter.
Water Meter Installation, 2"	ALL	\$1000.00 up to 100' from main, actual costs per linear foot thereafter.
Water Meter Installation, over 2"	ALL	\$1500.00 up to 100' from main, plus actual costs
Water Meter Replacement 5/8" and 3/4" Meter	ALL	\$50.00 plus actual costs
Water Meter Replacement .2"	ALL	Actual costs
Water Meter Replacement Over 2"	ALL	\$250.00 plus actual costs
Temporary Water Connection	A	\$300.00 plus usage and actual costs in excess of that amount
Temporary Water Connection	B, C, & D	\$500.00 plus usage and actual costs in excess of that amount
Leak Assessment (customer's side of the delivery point)	ALL	No charge for 1st assessment during the calendar year and \$50.00 thereafter.
Meter Relocation/Raising	ALL	Actual costs
Fire Hydrant Usage (requires meter and backflow assembly)	ALL	\$300.00 plus volume in accordance with customer class

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Damage to ASPA Infrastructure	ALL	Actual costs. And submit report to AG office.
Infrastructure Replacement or Relocation	ALL	Actual costs
Reconnection Fee – Non Payment	ALL	\$25.00 if reconnection fee is paid before 12:00pm on a working day, if after 12:00pm on working day or after hours reconnection is requested then the fee is \$25.00 plus actual costs
Reconnection Fee following termination of facilities	ALL	See applicable meter installation costs or Pause Fee costs depending on field assessment
After-hours Fee	ALL	\$50.00 in addition to other applicable fees
Meter Calibration	A	Free once per year, \$25.00 per meter thereafter
Meter Calibration	B, C, & D	Free once per year, \$50.00 per meter thereafter
Cross Connection Penalty	A	\$1,500.00 plus actual recovery cost for first offense; \$2,000.00 plus actual recovery cost for each following offense; requires Utility Certified Backflow Prevention Assembly; and Utility
Cross Connection Penalty	B, C, & D	\$2,500.00 plus actual recovery cost for first offense; \$3,000.00 plus actual recovery cost for each following offense; requires Utility Certified Backflow Prevention Assembly; and Utility

Illegal Connection or Tampering Penalty	A	\$500.00 plus actual recovery cost for first offense; \$1000.00 plus actual recovery cost for each following offense and the Utility refer to ASG - AG's office.
Illegal Connection or Tampering Penalty	B, C, & D	\$1000.00 plus actual recovery cost for first offense; \$1500.00 plus actual recovery cost for each following offense and the Utility refer to ASG – AG's office.
Tampering Reconnection Fee	All	\$200.00
Un-metered Usage	All	\$500.00 plus estimated usage in accordance with customer class
Access Fee (uncover meter)	All	\$50.00 plus actual costs
Water Pause Fee Reconnection	All	\$50.00 for meter installation if service line. meter box is still active and in place. Considered new installation if no line in place.
Uncover and Raising Sewer Manhole	All	Actual Cost
Sewer Connection	All	\$75.00 plus actual costs
Sewer Snake Rental	All	\$50.00 per day
Pump Septic Tank	All	1st Load per year – No Cost during regular working hours (8 AM to 4 PM); And a \$125.00 fee thereafter. After hour 1st load \$60 plus More than 1 Service per year is \$125.00 per load during

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		regular working hours; and a additional 60 for after hours
Pump Marine Vessel Wastewater	All	\$200.00 per Load
Installation of New Septic Tank	A	\$75.00 for those qualifying for the applicable grant program; otherwise, unavailable
Grease Trap Disposal	All	1st Load per year – No Cost during regular working hours (8 AM to 4 PM); And a \$125.00 fee thereafter. After hour 1st load \$60 plus More than 1 Service per year is \$125.00 per load during regular working hours; and a additional \$60 for after hours
Wastewater Disposal at Wastewater Treatment Plant (Tipping Fee)	All \$20.00 per load	Wastewater Disposal at Wastewater Treatment Plant (Tipping Fee)
Utility Service Upgrade	All	Actual costs
CCTV Inspection	All	Actual Cost

History: Rule 11-81, eff 1 Aug 81, Art. 2 § g; and Rule 10-33, eff 3 Aug 83, § 1. repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0318 Bill and payment.

The bill is due monthly on the date specified on the bill and shall be delinquent if not paid on or before the due date specified in the invoice or utility bill. The due date for each account shall be established to fall on a regular working day or Saturday, and failure to receive a bill shall not excuse a late payment. If the customer does not pay the utility bill on or before the

due date, additional rates and fees may be charged and service may be terminated after proper termination notice to the customer.

History: Rule 11-81, eff 11 Aug 81, Art. 2 § 1 0(A, B); repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0319 Termination and reconnection.

- (a) If a bill becomes delinquent, the Utility shall, at its sole discretion, terminate Utility service or terminate facilities after proper notice has been provided to the customer as provided by law in A.S.A.C. 15.0202. Default on any amount owed to the Utility service shall be construed as default on all services and shall entitle the Utility to terminate service or terminate facilities for utility services. The Utility shall have the option to demand that the full amount of both delinquent and current bills be paid in full. If a customer receives service at more than one location, and a bill at one location is delinquent, utility services to all locations may be terminated. If the Utility has terminated service, the Utility will not reconnect service until the customer has paid all arrears and an additional reconnection.
- (b) If a customer is in arrears for one hundred eighty (180) or more days, the Utility will, at its sole discretion, terminate and remove water facilities serving said customer.
- (c) Following termination of water facilities, the Utility will not reconnect service until the customer has paid the actual cost of reinstalling all equipment necessary to reconnect service, the actual cost of connecting or reconnecting service, all arrears, and an additional reconnection fee as set forth in section 12.0317 of this chapter. Further, for any customer whose service has been disconnected, the Utility may, at its discretion, require an additional deposit or payment in advance of service. If a field call is made after normal business hours by Utility personnel in order to reconnect service because of a prior termination of service, the customer will pay an additional after-hours fee as set forth in section 12.0317 of this chapter.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 10(C); repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981)

12.0320 Multiple units.

- (a) Multi-dwelling units. Multi-dwelling units shall be supplied and metered via one meter, unless the owner of the building requests individual meters for each unit. Multiple meters shall be installed at the customer's expense.
- (b) Multiple Units. Separate dwellings, houses, buildings, living, or business quarters on the same premises, under a single control or management, may be served at the option of the owner and with the Utility's permission, by either of the following methods:
 - (1) Separate service connections and individual meters to each or any unit; provided that the water pipeline system from each service connection is independent of the others and is not interconnected; or,
 - (2) Single service connection to the entire premises, on which only one service charge shall be applied. The responsibility for payment of all fees and charges for water furnished to combined units supplied through a single service connection shall be borne by the applicant.
- (c) Water Service Delivery Point for Multiple Users. The Utility will provide only one delivery point per building. Where the building provides for multiple occupancy, the one service per building must supply all meters for all tenants in the building. The meters shall be grouped or ganged at one central point.
- (d) Wastewater Service Discharge Point for Multiple Users. The Utility will provide only one discharge point per building. Where the building provides for multiple occupancy, the one service per building must be capable of handling the discharge for all tenants in the building. No other connection to the existing service will be allowed without the approval of the Utility.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 10(D); repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981)

12.0321 Marine vessels.

The Port Administration maintains jurisdiction and is responsible for providing water to ships through meters that are provided to the Port Administration at the wharves. Utility water meters should be calibrated once a year and high hazard backflow prevention systems will require yearly inspection, the cost of which will be paid by the customer. The Port Administration will be billed regularly by the Utility for water passing through these meters. All water which is transferred to marine vessels must be isolated from backflow or back siphonage into the Utility's water distribution system with the use of an approved high-hazard backflow prevention assembly as described in section 12.0305 of this chapter.

Wastewater from marine vessels shall not be disposed into the wastewater system, with the sole exception of United States Federal Government-owned vessels. Such vessels must first enter into a written agreement with the Utility which shall require, among other things, proof of financial indemnity in the event that the waste is contaminated. In the event that the Utility enters into an agreement for such disposal, wastewater from marine vessels should be disposed of at the Utulei Treatment Plant for monitoring of its content.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 11 ; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0322 Fire hydrants.

- (a) If temporary service is supplied through a fire hydrant, a permit for the use of the hydrant shall be obtained from the Utility. The Utility shall not issue a permit for nor allow the temporary use of a fire hydrant for more than thirty (30) days. The user shall pay a fee for use of the fire hydrant as set forth in section 12.0317 of this chapter. It is specifically prohibited to operate the valve of any fire hydrant other than by the use of spanner wrench designed for this purpose. The hydrant valve shall not be used for throttling or regulating the flow rate. Fire hydrants shall be opened, closed, and operated in strict conformity with instructions of Utility personnel.
- (b) Special rates apply to fire hydrants when used exclusively for fire-protection purposes by the American Samoa Fire Protection Services or the

American Samoa Police Department. These rates are set forth in section 12.0315 of this chapter.

- (c) All water which is transferred from a fire hydrant into another tank or temporary storage container must be isolated from backflow or back siphonage into the Utility's water distribution system with the use of an approved backflow prevention assembly or an approved air-gap, as described in section 12.0305 of this chapter.
- (d) No person or persons, other than those designated and authorized by the department of public safety, or by the Utility, shall open any fire hydrant, attempt to draw water from it or in any manner damage or tamper with it. Any violation of this rule will result in a report to proper law enforcement officials.
- (e) When a fire hydrant has been installed in the location specified by the proper authority, the Utility has fulfilled its obligation. Cost of such installation, maintenance, and upkeep shall be borne by applicant or fire authorities. If a property owner or other party desires a change in the size, type, or location of the hydrant, he shall bear all costs of such charges, without refund. Any change in the location of a fire hydrant must be approved by the proper authority.
- (f) Any damage to a fire hydrant, and the consequent resulting loss or damage to property, or any injury to persons arising from or out of the damage to fire hydrants, shall be paid for by the person or legal entity responsible for the damage.
- (g) The customer shall, at the customer's own expense, test periodically and maintain in good and, safe working condition all private hydrants under his control and not under the jurisdiction of the Utility.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 12; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0323 Prohibited Acts.

- (a) Cross-connection; Backflow; Back-siphonage. Unprotected cross-connections between the public water supply and any unapproved source of water are prohibited. The Utility will

terminate service to any customer failing to cooperate in the elimination or control of cross-connections, backflow, or back-siphonage.

- (b) Ground wire attachments. All individuals or business organizations are forbidden to attach any ground wires to any plumbing which is or may be connected to a service connection or main belonging to the Utility; the Utility will hold the customer liable for any damage to its property occasioned by such ground-wire attachments.
- (c) Installation of unapproved equipment. No person shall install any water operated equipment or mechanism, or use any water treating chemical or substance, if it is found that such equipment, mechanism, chemical, or substance may cause pollution or contamination of the domestic water supply. Such equipment or mechanism may be permitted only when equipped with an approved backflow prevention assembly.
- (d) Tampering. Tampering with the meter, water connection, wastewater connection, or other Utility infrastructure is prohibited.

Unauthorized connections. All final connections, permanent or temporary, between the Utility's and the customer's lines will be made by the Utility, and the Utility will not permit or tolerate unauthorized connections.

- (f) Unlawful wastewater discharge. It shall be for any person or entity to discharge or allow the discharge of any wastewater onto or under the surface of the ground or into the waters of this Territory, except through a lawfully permitted wastewater system. It shall also be unlawful for a person or entity to discharge specific substances into the Utility's wastewater system, including, but not limited to the following:
 - (1) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid, or gas;
 - (2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure of

interfere with any wastewater system process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving of waters of the wastewater system, including but not limited to cyanides in excess of 2 mg/l;

- (3) Any waters or wastes having a pH higher than 10.5 or lower than 5.5 or having any other corrosive property capable of causing damage or hazard to Utility structures, equipment, and personnel;
- (4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in the wastewater system, or other interference with the proper operation of the wastewater system;
- (5) All waters or wastes containing strong acid and pickling waste unless neutralized prior to discharging into the wastewater system;
- (6) Any liquid or vapor with an extremely high temperature;
- (7) Any water or waste containing fats, wax, grease, or oils which may solidify or become viscous at average temperature;
- (8) Any solids which have not been properly shredded;
- (9) Any waters or wastes containing iron, chromium, copper, zinc, and similar objectionable or toxic substances or other substances in such high quantities as to be problematic;
- (10) Any waters or wastes containing phenols or other taste producing or odor producing substances;
- (11) Any water or wastes containing nonhuman animal feces or that have been used in commercial cleaning or processing of animals, including but not limited to water which has come into contact with pigs or piggeries;
- (12) Any storm water or surface runoff; and

- (13) Any and all other substances which the Utility shall deem objectionable and harmful to the wastewater system.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 13; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0324 Damage to Utility property.

The customer shall be liable for any damage to a meter or other equipment or property owned by the Utility which is caused by an act of the customer or his tenants, agents, employees, contractors, licensees or permittees including the breaking or destruction of locks by the customer or others on or near a meter and any damage to a meter that may result from hot water or steam from a boiler or heater on the customer's premises. The Utility shall be reimbursed by the customer for any such damage promptly upon presentation of a bill and prior to reconnection of service.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 14; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0325 Excessive or large demands; waste.

- (a) The Utility may refuse to furnish water and may discontinue service to any premises where the demand is greatly in excess of past average or seasonal use, and where such excessive demands by one customer are or may be detrimental or injurious to the service furnished to other customers. The Utility may refuse to furnish water and may discontinue service to any premises where excessive demands by one customer will result in inadequate service to others.
- (b) Where water is wastefully or negligently used on a customer's premises, significantly affecting the general service, the Utility may discontinue the service if such conditions are not corrected within five (5) days after giving the customer written notice of the waste.
- (c) When a large quantity of water is desired for filling a pool or for other purposes, arrangements must be made with the Utility prior to taking such water. Permission to take water in unusual quantities will be given only if it can be safely

delivered through the Utility facilities and if other customers are not inconvenienced.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 15; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0326 Maintenance.

- (a) The customer shall, at the customer's own risk and expense, furnish, install, and keep in good and safe condition all equipment utilizing water via the Utility's water and wastewater systems.
- (b) The customer has sole control of the amount of water drawn from the Utility's mains through the meter and is responsible for maintenance and repairs to pipes and fixtures beyond the meter. No allowance will be made for loss of water due to faulty fixtures or broken or damaged water pipes beyond the meter.
- (c) The owner of any premises on which or on account of which check valves or other protective devices are installed, shall inspect these devices for water tightness and reliability at least every three months. The devices shall be serviced, overhauled, or replaced whenever they are found defective and all costs of repair and maintenance shall be borne by the customer.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 16; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0327 Unsafe and nonconforming apparatus.

- (a) The Utility may refuse to furnish water or wastewater service and may discontinue said service to any premises where apparatus, appliances, or equipment using water is dangerous, unsafe, or not in conformity with laws or regulations. All customer-installed pressure boosting installations shall be located on the customer's side of the water meter. The Utility neither assumes responsibility for operation or maintenance of such booster pumps nor guarantees flow or pressure resulting therefrom. The Utility does not assume liability for inspecting apparatus on the customer's property.
- (b) The service of water to any premises may be immediately discontinued by the Utility if any defect is found in approved backflow prevention

assemblies, check valve installations, or other protective devices or it is found that dangerous, unprotected cross-connections exist. The Utility may, periodically or as otherwise may be necessary, inspect and test such equipment for water tightness, defects, or any other reason, and may inspect for cross-connections. Service will not be restored until such defects are corrected.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 17; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0328 Inability to provide satisfactory service.

If, in the opinion of the Utility, it is doubtful that satisfactory water or wastewater service may be provided due to any reason including but not limited to the location or elevation of the customer's premises, then the Utility may either:

- (a) Require the customer fill out or sign necessary paperwork;
- (b) For water service, elect not to provide water, but instead to release the customer to pursue other alternatives for obtaining potable water, such as obtaining well, spring, or trucked water; or
- (c) For wastewater service, elect to require installation of a septic system.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 19; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0329 Land use restrictions.

Whenever applications for any land use activity within the watersheds serving the Utility, whether permitted or not by territorial agencies, are submitted to the Utility for its review, the Utility shall investigate the effects the proposed use may have on water and wastewater resources. The Utility may recommend disapproval, within thirty (30) days, if it finds, for any reason that the proposed activity could affect water resources and may be a detriment to the water resources used or expected to be used for domestic water. If the Utility recommends disapproval, it shall inform the applicant of those facts and reasons upon which the disapproval is based.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 19; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0330 Rules for elevated lots.

Lots that are located above the elevation for which the Utility provides service may be eligible for service at the Utility's sole discretion and subject to such requirements and constraints as the Utility deems necessary.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 20; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0331 Wells.

Private well drilling is specifically prohibited due to the potential for serious detrimental effects to the ground water supply. Only the Utility may drill a new well and authorize the use of any existing well.

History: Rule 11-81, eff 1 Aug 81, Art. 2 § 21; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0332 Violations.

- (a) The Utility reserves the right to refuse water or wastewater service to any customer that does not comply with the rules set forth in this chapter.
- (b) If any person or entity responsible for complying with the provision of this chapter violates any such provision, the Utility shall notify that person or entity in writing of said violation(s) and order that person or entity to correct the said violation(s). The Utility shall be entitled to assess fees and charges at its discretion, pursuant to this chapter.
- (c) Notices of violations shall be served in person, posted upon the premises in a prominent place, or via first class mail to the account holder.

History: Rule 11-81 eff 1 Aug 81 Art. 2 § 22(A-H); repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0333 Noncompliance charge.

Any person or entity who fails to comply with the terms and provisions of this chapter may be subject to a noncompliance charge. The Utility shall have the right to issue a noncompliance charge of not less than twenty-five dollars (\$25.00) per customer account, nor more than one thousand dollars (\$1,000.00),

based upon the severity and repetition, if any, of the violation.

History: Rule 11-81, eff 1 Aug 81. Art. 2 § 22(1) ; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0334 Authority to adjust rates.

The Board of Directors of the American Samoa Power Authority may, by formal resolution adopted in accordance with its bylaws, adjust (reduce or increase) one or more rates, charges, and/or fees codified in sections 12.0315 through 12.0317, provided that such adjustment or adjustments do not exceed publicly filed rates, charges, and/or fees adopted under A.S.C.A. :15.0102 and the Administrative Procedure Act, A.S.C.A. 4.1001 et. seq. The Board, at a minimum, shall review the rate in the first quarter of each calendar year.

History: Rule 11-51, eff 1 Aug 81, Art. 2 § 23; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0335 Severability.

If any section, subsection, sentence, clause, phrase, provision, or application of this chapter for any reason is held invalid, such invalidity shall not affect the validity and/or application of the remainder of this chapter as a whole or any part thereof other than the part so held invalid.

History: Rule 11-51, eff 1 Aug 81, Art. 2 § 24; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0336 Effective date.

This chapter and all the provisions contained herein shall take effect upon compliance with Administrative Procedures Act, A.S.C.A. and A.S.C.A. 4.1020(b).

History: Rule 11-51, eff 1 Aug 81, Art. 2 § 25; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

TITLE 12 – CHAPTER 04 – SECTIONS: SEWER

Section	
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Editors Note: All Sections of Chapter 4, Title 12 as provided for in Rule 2-2004 has been repealed and amended in its entirety to the current Sections as provided for in Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0400 Definitions.

- (a) "Bin" or "Bins," as used in this chapter, is defined as a receptacle capable of containing between two (2) and six (6) cubic yards of solid waste and designed for mechanical handling by a front end loader or rover tuck, and which is typically used for village collection or general service customers.
- (b) "Bulky waste," as used in this chapter is defined as large items of refuse such as appliances, furniture, discarded vehicles, and other oversized wastes which would not fit into a container or bin for collection.
- (c) "General service," as used in this chapter, is defined as any business, individual proprietorship, partnership, corporation, association, joint venture, government agency, or other project which carries on activity of a nonresidential nature, whether for profit or not

for profit and includes customers in classes B through D as those are set forth in A.S.A.C. 12.02300) through (d).

- (d) "Container," as used in this chapter, is defined as a polyurethane, plastic, and/or metal receptacle capable of containing between twenty (20) and sixty-four (64) gallons of solid waste, of the type typically used by residential customers.
- (e) "Disposal facility" or "disposal facilities," as used in this chapter, is defined as any location where any final treatment, utilization, processing, or deposition of solid waste occurs.
- (f) "Government," as used in this chapter, is defined as the American Samoa Government.
- (g) "High Elevation Customers," as used in this chapter. is defined as a residential service customer who lives in a high elevation area not being serviced by SW route collections due to no access roads.
- (h) "Industrial service customer," as used in this chapter, is defined as an industrial service customer, as set forth in A.S.A.C. 12.0230(d) or (f).
- (i) "Large general service customer," as used in this chapter, is defined as a large general service customer, as set forth in A.S.A.C. 12.0230(c) or (e).
- (j) "Multi-tenant unit," as used in this chapter, is defined as a structure which has two or more electric meters physically attached to the structure occupied by different tenants.
- (k) "No Human Occupancy," as used in this chapter, is defined as a situation where humans are rarely present at a location. This is specifically intended to apply to sites where power is required yet only receive infrequent, periodic visits by humans, such as radio towers or other un-manned sites. This applies to general service customers that have vacant or unoccupied units. with an active electric meter, can temporarily be assessed this rate until unit is occupied.
- (1) "Owner," as used in this chapter, is defined as the occupant of a structure; provided, however, that if said structure is rented to any occupant, then

the term "owner" means the person to whom the rent is payable.

- (m) "Residential," as used in this chapter, is defined as anything of or relating to an individual or family occupying a residential dwelling unit or single family home or church as an exception to the "Residential" customer class.
- (n) "Residential customer," as used in this chapter, is defined as a residential service customer, as set forth in A.S.A.C. 12.0230(a).
- (o) "Small general service customer," as used in this chapter, is defined as a small general service customer, as set forth in A.S.A.C. 12.0230(b).
- (p) "Solid waste," as used in this chapter, is defined as all waste in a solid or semi- solid state generated by residential, commercial, institutional, and industrial sources including infectious waste, but excluding hazardous waste.
- (q) "Utility," as used in this chapter, is defined as the American Samoa Power Authority.

History: Rule 02-2004, May 12, 2005; repealed and replaced by Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0401 Service generally.

- (a) The Utility shall take charge and shall administer the collection and disposal of solid waste. The rules and regulations herein govern the handling, storage, collection, transportation, treatment, utilization, processing, and final disposition of all solid waste within the Territory. The provisions of this chapter shall be liberally construed for the accomplishment of these purposes.
- (b) Nothing in this chapter shall be construed as relieving an owner or possessor of premises from the obligation of complying with any other laws, regulations, orders, or requirements which may be applicable. The enactment of this chapter does not create any specific rights to products or services. All products or services mentioned or listed in this chapter are provided by the Utility at the Utility's sole discretion.
- (c) The Utility shall develop a schedule establishing the designated collection day or days for each

type of service on a geographic basis. Said schedule may be amended from time to time at the Utility's discretion. The Utility shall collect all properly prepared solid waste receptacles on a designated collection day. Customers requesting collection service on a non-designated collection day shall be charged a fee in accordance with the fee schedule set forth in this chapter.

- (d) The Utility shall not collect or accept solid waste on each of the following holidays: New Year's Day, Good Friday, Thanksgiving Day, and Christmas Day. During weeks where one of these holidays occurs, solid waste collection for the days on and following the holiday will occur one day later. Exceptions to the standard holiday observation schedule may occur at the Utility's discretion.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0402 Customer accounts.

All customers of the Utility with an active electric meter shall also have a solid waste account and shall be responsible for paying all corresponding fees as described and set forth in this chapter. In the case of rented or leased property, for all customer classes, the landlord or owner of said property must co-sign for the tenant or renter on the initial application or transfer of an account. Cosigners shall be held financially responsible for payment of any past due utility bills of the tenant. This applies to all rate classes. Utility service will be disconnected and not be restored until payments or a payment plan is made to resolve past due utility accounts.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0403 Persons responsible.

- (a) All residents shall be responsible for complying with the provisions of this chapter with respect to the storage and collection of solid waste on the premises at which they reside.
- (b) All owners and persons or entities in possession of common areas of multi- family residential premises shall be responsible for complying with the provisions of this chapter with respect to the storage and collection of solid waste generated

on such premises, and this duty shall extend to each manager, agent, and employee of such persons.

- (c) All owners and persons or entities in possession or control of non-residential premises shall be responsible for complying with the provisions of this chapter with respect to the storage and collection of non-residential solid waste on the premises they possess, and this duty shall extend to each manager, agent, and employee of such persons.
- (d) On all premises, it shall be a violation of this chapter to perform any act which would cause the premises to fail to comply with the requirements of this chapter, whether or not the person or entity charged is the owner, resides on the premises, is in possession of the premises, or is the agent or employee of a person owning, residing on, or in possession of the premises.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0404 Violations.

- (a) The Utility reserves the right to refuse service to any customer that does not comply with the rules set forth in this chapter.
- (b) If any person or entity responsible for complying with the provisions of this chapter violates any such provision, the Utility shall notify that person or entity in of said violation(s) and order that person or entity to correct the said violation(s). The Utility shall be entitled to assess fees charges, pursuant to this chapter.
- (c) Notices of violations shall be served in person, posted upon the premises in a prominent place, or via first class mail to the account holder.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0405 Proper receptacles required on all premises.

Solid waste shall not be placed alongside a road, right of way, or roadway unless it is contained in a proper receptacle. On all premises where solid waste is generated, regardless of the nature of activity carried out, the owner or possessor of said premises shall use proper receptacles for the storage of all solid waste.

Receptacles shall be leak proof, waterproof, fly- tight, and shall be covered at all times except when waste is being deposited or removed. The receptacles must be sufficient in size and quantity to hold the aforementioned waste. Bins and containers are proper receptacles for solid waste. Nondurable receptacles, including but not limited to crates, cardboard boxes, or bags, are not proper receptacles for solid waste.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0406 Solid waste bins.

- (a) Bins shall be at all times the property of the Utility. The Utility reserves the right to remove or relocate bins as it deems necessary. Owners requesting a long-term or temporary solid waste bin or the relocation of an existing solid waste bin must:
 - (1) Place a request with customer service and pay the site assessment fee set forth in this chapter;
 - (2) Work with the Utility in order to assure that the bin site and size are feasible and warranted, taking into account the number of prospective users, health and safety concerns, and requirements of the Utility; and
 - (3) Upon the Utility's approval of the site and bin size, the owner shall pay the bin placement fee set forth in this chapter prior to placement or relocation of the bin.
- (b) Owners must provide and maintain the bin site to allow safe, reasonable, and easy collection access for Utility vehicles. If the Utility is unable to properly and safely collect solid waste from a bin, the Utility will cease collection until the owner corrects the problem. The site owner must maintain the bin. The maximum weight of a filled bin shall be 6,500 pounds.
- (c) Owners seeking bin repair or replacement shall place a request with customer service and shall pay the associated fee as set forth in this chapter.
- (d) Owners with a temporary solid waste bin for thirty (30) days or more shall pay the general service rate collection fee as described in section 12.0413(a) of this chapter for each month that

the bin is located on the site. Temporary bins shall be collected on designated collection days only, unless other arrangements have been made for collection service on a non-designated collection day pursuant to section 12.0401(c) of this chapter.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0407 Solid waste containers.

(a) Solid waste containers shall be maintained by the owner. The containers shall not have defects which would affect the Utility's mechanical handling, including, but not limited to, jagged edges and greasy sides. The interior surface of the container shall be smooth with no projections and the top diameter shall be equal to or larger than the bottom diameter. The container shall have a capacity of at least twenty (20) gallons but not more than sixty-four (64) gallons. The maximum weight of a filled container to be collected by mechanical handling shall be no more than one hundred thirty (130) pounds. The maximum weight of a filled container to be collected by mechanical handling shall be no more than one hundred (100) pounds.

(b) Solid waste containers may be rented from the Utility on a rent to own basis. Customers seeking to rent solid waste containers shall pay a rent to own fee in accordance with the fee schedule set forth in section 12.0414 of this chapter for twelve consecutive months. Upon the conclusion of twelve consecutive rent to own payments, the container shall become the property of the owner. Customer shall take full responsibility of the container and will continue to pay full amount due. Customers with rented solid waste containers must maintain the containers in good working condition at all times. In the event that a Customer fails to continue making rent to own payments, the Utility reserves the right to remove such container.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0408 Proper storage of solid waste.

(a) Customers must properly store and prepare solid waste for collection. Solid waste must be

maintained and stored in a neat, clean, odor-free, and sanitary condition. Solid waste shall be contained in a manner to prevent the solid waste from escaping its receptacle. The owner shall maintain a clean solid waste storage area, replace tom bags, tipped solid waste containers, and be vigilant in combating the effects of natural conditions, vandalism, or animals.

- (b) Solid waste such as paper products, ashes, powders, dust, sawdust, broken glass products, or other materials likely to escape or cause injury shall be securely enclosed within the container. Solid waste shall not contain liquids. Paint containers may be collected only if they are less than one third full; the paint must be solidified (such as through evaporation or the addition of cat litter, peat moss, or soil) and placed in the container with the paint container lid tightly sealed.
- (c) Non-residential premises shall meet all the aforementioned requirements as well as being accessible to any necessary public health and fire inspection personnel.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0409 Solid waste handling for specific waste types.

- (a) Bulky waste shall be stored and transported in such a manner to prevent a nuisance or safety hazard. Bulky waste shall be taken directly to a disposal facility by the customer.
- (b) Scrap metal in any form shall not be disposed of on the roadside. Scrap metal shall be taken directly to a Utility approved disposal facility by the customer.
- (c) Piggery waste or any animal waste originating from pigs shall not be disposed of via the Utility's solid waste collection service and shall not be accepted at the Utility's disposal facility.

Violations on the handling of wastes described above are subject to fees and charges in accordance with this chapter.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0410 **Proper location of solid waste receptacles.**

Solid waste shall be properly prepared and placed for collection before 5 a.m. on the designated collection day.

- (a) Containers shall be properly placed at the curb on the designated collection day in a manner to maximize automated collection efficiency. Containers shall not be placed into marked bike lanes. The container shall be placed in a location that allows three (3) feet between the container and any other obstacles, including but not limited to Utility poles, trees, vehicles, or other obstacles. Containers shall not be placed for collection beneath tree branches, wires, or overhangs lower than fifteen (15) feet. On a case by case basis, the Utility may specify exact collection locations for containers.
- (b) Bins shall be safely and easily accessible on designated collection days. Bins blocked by vehicles, delivery trucks, locked in premises, or blocked by any other object will not be emptied. If the Utility cannot access the bin for collection, the owner must wait until the next designated collection day or make other arrangements for collection service on a non-designated collection day pursuant to sections 12.0401 (c) and 12.0414 of this chapter.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0411 **Collection rates generally.**

All Utility customers with an active electric meter shall be charged a solid waste collection rate. Locations with multiple meters and multiple tenants must still pay the applicable solid waste collection rate per meter. The rate shall be based upon customer class and collection type as described further in this chapter.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0412 **Collection rates for residential customers.**

- (a) All residential class customers, as set forth in A.S.A.C. 12.0230(a), shall pay the following flat rates:

\$8.64 per month until May 13, 2015:

\$11.40 per month, from May 14, 2015 to September 30, 2016;

\$11.98 per month, from October 1, 2016 to September 30, 2017;

\$12.57 per month, from October 1, 2017 and continuing thereafter.

- (b) All residential class customers in multi-tenant units and/or with multiple meters, such as apartments, and high elevation customers shall pay the following flat rates:

\$4.37 per month until May 13, 2015:

\$4.59 per month, from May 14, 2015 to September 30, 2016:

\$4.68 per month. from October 1, 2016 to September 30, 2017:

\$4.91 per month, from October 1, 2017 and continuing thereafter.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0413 **Collection rates for general service customers.**

- (a) All small general service customers, as set forth in A.S.A.C. 12.0230(b), shall pay the following flat rates:

\$63.89 per month until May 13, 2015:

\$57.50 per month, from May 14, 2015 to September 30, 2016:

\$51.75 per month, from October 12 2016 to September 30, 2017:

\$52.79 per month. from October 1, 2017 and continuing thereafter.

Self-generating electric small general service customers shall also pay the small general service rate listed above.

- (b) All large general service and industrial customers, including customers in Classes C through F as set forth in A.S.A.C. 12.0230(c)-(f), shall pay the following flat rates:

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\$372.68 per month until May 13, 2015;

\$391.31 per month, from May 14, 2015 to September 30, 2016:

\$399.14 per month. from October 1. 2016 to September 30. 2017:

\$419.10 per month, from October 1, 2017 and continuing thereafter.

Self-generating electric customers in Classes C through F shall also pay the large general service rates listed above.

- (c) All general service customers in Class B and C with Multi-tenant units and No Human Occupancy meters as set forth in A.S.A.C. 12.0230(b) and (c) shall pay the following flat rates:

\$31.95 per month until May 13, 2015:

\$33.55 per month from May 14. 2015 to September 30. 2016:

\$34.22 per month from October 1, 2016 to September 30, 2017:

\$35.93 per month from October 1, 2017 and continuing thereafter.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0414 Fee schedule.

All fees for products or services described in this section must be prearranged with the Utility and prepaid by the customer.

<i>Service</i>	<i>Applicable Customer Class</i>	<i>Amount</i>
64 Gallon Wheeled container (purchase)	A	\$80.00 or actual cost, whichever is more
64 Gallon Wheeled Container (rent to own)	A	\$9.00 each, per month for 12 months or actual costs with finance fee, whichever is more (maximum of three per account)
Bin Placement Site Assessment	B,C,D,E, & F	\$30.00 per bin

Bin Placement	B,C,D,E, & F	\$100.00 per bin
Bin Replacement, 2 - 3 cu yd (irreparable)	B,C,D,E, & F	Actual cost to the Utility, including, but not limited to, bin cost
Bin Replacement, 2 - 3 cu yd (reparable)	B,C,D,E, & F	\$250.00 per bin
Bin Replacement, 4 - 6 cu yd arable	B,C,D,E, & F	Actual cost to the Utility, including, but not limited to, bin cost
Bin Replacement, 4 - 6 cu yd (reparable)	B,C,D,E, & F	\$350.00 per bin
Temporarily Bin Use (2 to 6 cu yd)	All	\$150.00 per two (2) week period
Collection Services on a Non-designated Collection Day	All	\$300.00 per bin / \$100.00 per container
Disposal Facility Fees	A	No Charge
Disposal Facility Fees	B,C, & E	See Section 12.0415 of this chapter
Disposal Facility Fees	D & F	See Section 12.0415 of this chapter
Waste Oil Disposal Fee	B, C, D, E, & F	\$0.25 per gallon
Damage to ASPA Assets	All	Actual costs – included all applicable cost
Non-compliance charge	All	\$ 25.00 - \$ 1,000, at the Utility's Discretion

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0415 Disposal facility fees (Tipping Fees).

- (a) Residential customers shall not be required to pay disposal facility fees.
- (b) For general service customers, disposal facility fees are separate from and in addition to any other solid waste rates and fees. Payment of general service solid waste collection rates will not waive the requirement to pay a disposal facility fee upon the customer's delivery or

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deposition of solid waste at the disposal facilities.

\$0.040/pound. per month until May 13, 2015:

- (c) General Service customers in Classes B, C, and E seeking to dispose solid waste and/or bulky wastes at the disposal facility shall pay the Utility's disposal facility fee based upon the volume of solid waste to be disposed. Weight will supersede volume as a basis of determining fees and shall be the controlling method of determining disposal facility fees. Volume shall thereafter only be used when the scale is not functioning. The disposal facility fees based upon weight and volume shall be as follows:

\$0.042/pound, from May 14, 2015 to September 30, 2016:

\$0.043/pound, from October 1, 2016 to September 30, 2017:

\$0.045/pound. from October 1, 2017 and continuing thereafter.

- (2) When calculated by volume:

\$5.39/cubic yard, per month until May 13, 2015:

\$5.66/cubic yard, from May 14, 2015 to September 30, 2016:

\$5.83/cubic yard from October 1, 2016 to September 30, 2017; and

\$6.00/cubic yard, from October 1, 2017 and continuing thereafter.

- (1) When calculated by weight:

\$0.140/pound, per month until May 13, 2015:

\$0.147/pound. from May 14, 2015 to September 30, 2016:

\$0.151/pound. from October 1, 2016 to September 30, 2017:

\$0.156/ pound, from October 12, 2017 and continuing thereafter.

- (2) When calculated by volume:

\$18.52/cubic yard, per month until May 13, 2015:

\$19.45/cubic yard. from May 14, 2015 to September 30, 2016:

\$20.03/cubic yard, from October 1, 2016 to September 30, 2017;

\$20.63/cubic yard, from October 1, 2017 and continuing thereafter.

- (d) Industrial service customers in Classes D and F shall be required to pay based upon volume of solid waste and/or bulky wastes to be disposed; weight will supersede volume as a basis of determining fees and shall be the controlling method of determining disposal facility fees. Volume shall thereafter only be used when the scale is not functioning. The fees based upon weight and volume shall be as follows:

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0416 Noncompliance charge.

Any person or entity who fails to comply with the terms and provisions of this chapter may be subject to a noncompliance charge. The Utility shall have the right to issue a noncompliance charge of not less than twenty-five dollars (\$25.00) per customer account, nor more than one thousand dollars (\$1,000.00), based upon the severity and repetition, if any, of the violation.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0417 Authority to adjust rates.

The Board of Directors of the American Samoa Power Authority may, by formal resolution adopted in accordance with its bylaws, adjust (reduce or increase) one or more rates, charges, and/or fees codified in sections 12.0412 through 12.0415, provided that such adjustment or adjustments do not exceed publicly filed rates, charges, and/or fees adopted under A.S.C.A. 515.0102 and the Administrative Procedure Act, A.S.C.A. 4.1001 et. seq. The Board, at a minimum, shall review the rate in the first quarter of each calendar year.

- (1) When calculated by weight:

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0418 Damage to utility property.

Customers shall be liable for any and all damage to the Utility's assets, including, but not limited to, equipment, facilities and/or property, that is caused by an act of the customer or his tenants, agents, employees, contractors, licensees, or permittees including the breaking and/or destruction of the Utility's assets. The Utility shall be fully reimbursed by the customer for such damage promptly upon presentation of a bill and prior to replacement of Utility assets.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0419 Severability.

If any section, subsection, sentence, clause, phrase, provisions, or application of this chapter is, for any reason, held to be invalid, such invalidity shall not effect the validity and/or application of the remainder of this chapter as a whole or any part thereof other than the part so held invalid.

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

12.0420 Effective date.

This chapter and all the provisions contained herein shall take effect upon compliance with Administrative Procedures Act, A.S.C.A. 4.1009(a)-(b) and A.S.C.A. 4.1020(b).

History: Rule 2-2015, eff 20 June 15 (Ex. Ord. 4-1981).

TITLE 12 – CHAPTER 05 – EMERGENCY ENERGY CONSERVATION PLAN

Sections:

- 12.0501 Authority
 - 12.0502 Adoption of American Samoa
 Emergency Energy Conservation Plan
 - Annex A – Emergency Energy Conservation Plan
 - Appendix I – Fuel Consumption by Type
 - Appendix II – Emergency Energy Conservation Task
 Force
-

12.0501 Authority

The executive order codified in this section and 12.0502 is issued under the authority of Section 6 of Article IV of the Revised Constitution of American Samoa and 15.0501 ASCA.

History: Rule 2-82 (Ex. Ord. 3-82), eff 2 Jul 82, § 1.

**12.0502 Adoption of American Samoa
 Emergency Energy Conservation Plan**

The American Samoa Emergency Energy Conservation Plan, attached hereto as Annex “A”, is approved, adopted and incorporated by reference herein.

History: Rule 2-82 (Ex. Ord. 3-82), eff 2 Jul 82, § 2.

Annex A – Emergency Energy Conservation Plan

I. BACKGROUND

- A. American Samoa is an island Territory totally dependent upon imported fuel -“imported” meaning transported via tanker from the mainland United States -for its development, economic well-being and the welfare of its people. Marlex Petroleum, Inc. (Marlex), the prime fuel supplier for the Territory, schedules tanker movements based on information received weekly from the local Marlex manager who, however, has no control over scheduling of replenishment tankers.
- B. Since the OPEC oil embargo of 1974 the conservation of energy has been a priority goal of government and private interests. While there has been no repetition of that disruption, serious impairment of the supply of fossil fuels, upon which American Samoa is almost entirely dependent, remains a distinct possibility. Because of this, the Governor is granted Emergency Energy Management powers by Title 15, American Samoa Code Annotated (ASCA). This Title states that the Governor, “after proclaiming that an emergency exists which threatens to disrupt the social order, or imperil the health and safety of the people of American Samoa may, by rule or executive order:
 - (1) control, restrict, and regulate by rationing, freezing, use of quotas, allocations, prohibitions of shipments, price fixing,

allocation, or other means the use, sale or distribution of fuel, petroleum products, or other sources of energy;

- (2) prescribe and direct activities in connection with but not limited to use, conservation, salvage and prevention of waste of fuel or other sources of energy;
- (3) take such other action as may be necessary for the management of energy resources during any emergency declared by the Governor.”

C. Section 212, Title II of Public Law 96-102, the “Emergency Energy Conservation Act of 1979,” requires the submission of an emergency energy conservation plan by each State or territory not later than 45 days after the President has published an energy conservation target for that State and, further, encourages submission of a plan in advance of the declaration of an emergency and publication of an energy conservation target by the President. He may establish such a target for anyone or more energy source(s).

D. The Director of the TEO will be responsible for the implementation of this Plan. He will establish procedures for monitoring of the Actions required under each Phase and for maintaining the necessary flow of information from suppliers to insure compliance. Additionally he is authorized to request, and shall be provided, such information as may be required to determine “normal” fuel and energy consumption levels as the basis for the various Phases of this Plan.

E. This Plan has been prepared in response to the above-cited ASCA Title and Federal Statute.

II. THE PLAN – GENERAL

A. Concept

1. The basic concept of the Plan is to establish targets (percentages) of fuel usage and/or demand, require the suppliers/major users (Marlex, Union, ASPA, Canneries, etc.) to meet these targets and advise the TEO of the methods used and the results. Basic fuel supply and usage information is in

Appendix I. In summary, at normal usage rates and with the Marlex fuel farm and all other facilities filled to capacity, there is a:

- a. 61 days supply of diesel fuel;
- b. 63 days supply of jet fuel;
- c. 79 days supply of unleaded motor gasoline;
- d. 142 days supply of regular (leaded) gasoline;
- e. 548 days supply of aviation gasoline. The greatest demand for fuel is for diesel fuel, followed by jet fuel, motor gasoline, aviation gasoline and others;

2. The Plan is divided into Phases of increasing stringency. When invoking the Plan the Governor may start with whichever Phase is deemed most suitable to the existing emergency. It is not required that Phases be followed in sequential order, or that complete Phases be implemented, because the various Phases may address shortages of different fuel stocks. Whenever any Phase, or part thereof, is implemented, all government-operated air conditioners, except those required for patient well-being at LBJ hospital and to safeguard equipment which is required to be operated within specified temperature/humidity parameters, shall be turned off.

B. Energy Emergencies

1. An energy emergency can be deemed to exist when:
 - a. A disruption in the tanker schedule occurs;
 - b. The President of the United States declares that a major disruption has occurred or is about to occur;
 - c. A state of national emergency or war is declared;
 - d. A man-made or natural disaster occurs, i.e. tank explosion, flood, hurricane.

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2. In the event of a disruption in the tanker schedule, the Governor may invoke this plan, in whole or in part. The severity and duration of the supply disruption will be the primary factors determining the implementation of the Plan.
 - a. The local Manager of the Prime Supplier shall immediately advise the Director, TEO whenever there is a disruption in the tanker schedule. This advice will include the reason for disruption, such as a strike, mechanical failure, etc. and will include an estimate of the fuels remaining in days, at normal usage rates and the expected arrival date of the next tanker. This advice will be by telephone, with a confirming memorandum following.
 - b. Upon receipt of the above information, the Director of the TEO shall immediately notify the Governor with a recommendation regarding implementation of this Plan.
3. In the event the President declares that a disruption has occurred or is anticipated, he may direct the Governor to meet certain mandatory fuel savings targets which will be determined by the President at that time. Upon receipt of such declaration the Governor shall invoke this Plan.
4. In the event a state of national emergency or war is declared, the Governor may invoke the Plan in advance of any direction by the Secretary of the Interior, the President or Congress.
5. In the event of a natural or man-made disaster, e.g. hurricane, fire, explosion, etc., the managers or other designated, responsible personnel in the organizations of the suppliers (Marlex, Union Oil) and the major users (ASPA, Star Kist, Van Camp) shall provide the Director, TEO with whatever applicable information he may require in order to advise the Governor regarding the implementation of this Plan. The Commissioner of Public Safety, as the

Disaster Assistance State Coordinating Officer, shall provide such Damage Assessment information as pertains to fuel receiving/distribution capabilities as is available to assist in determining the need for Plan implementation.

6. The Commissioner of Public Safety is responsible for enforcing the limitations imposed by this Plan, as requested by the Director of the TEO.

C. Definitions.

For purposes of this Plan, the following definitions apply:

1. Transient vessels are those vessels which are not registered and/or based in American Samoa, e.g., FORUM-Line vessels; Queen Salamasina.
2. Normal daily usage rate is a statistical average not adjusted for seasonal variations.

III. THE PLAN – PHASE I

- A. In this Phase, public announcement of a disruption or impending reduction in supply is made by using all available media – TV, radio, OPI bulletin, newspaper, FAA communications, etc. – and voluntary reduction in consumption is requested.

B. Actions and Responsibilities

<u>Actions</u>	<u>Responsible Office/Agency</u>
1. Reduce electricity generated to a level which will require only 90% of normal fuel consumption. Advise Governor, TEO of method to be used, e.g., power rationing, etc. so public announcements can be made.	Exec. Dir., ASPA.
2. Reduce fuel sales to fishing fleet by 10%. Suspend sales to transient vessels.	Marlex; Union Oil; Canneries
3. Reduce U.S. airlines and military flight schedules by 10%.	SPIA: MAC; other U.S. airlines.

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4. Reduce fuel sales to foreign airlines and military services by 10%.	Marlex.
5. Reduce motor gasoline deliveries to retail and ASG service stations by 10%.	Marlex; Union Oil.
6. Prescribe odd-even gasoline sales days for motor gasoline.	Governor; Marlex; Union Oil.
7. Reduce gasoline coupon issue by 10%, except for emergency vehicles.	Dir., PWD.
8. Advise public, airlines, canneries, shipping companies, etc. of reductions and methods.	Governor’s Press Secretary through all available media; Port Admin; Dir., TEO.
9. Monitor all above; advise Governor with recommendation(s).	Dir., TEO.

IV. THE PLAN – PHASE 2

A. In this Phase a 10% reduction in energy and fuel usage will be required:

B. Actions and Responsibilities

<u>Actions</u>	<u>Responsible Office/Agency</u>
1. Reduce electricity generated to a level which will require only 90% of normal fuel consumption. Advise Governor, TEO of method to be used, e.g., power rationing, etc. so public announcements can be made.	Exec. Dir., ASPA.
2. Reduce fuel sales to fishing fleet by 10%. Suspend sales to transient vessels.	Marlex; Union Oil; Canneries
3. Reduce U.S. airlines and military flight schedules by 10%.	SPIA; MAC; other U.S. airlines.
4. Reduce fuel sales to foreign airlines and military services by 10%.	Marlex.
5. Reduce motor gasoline deliveries to retail and ASG service stations by 10%.	Marlex; Union Oil.
6. Prescribe odd-even gasoline sales days for motor gasoline.	Governor; Marlex; Union Oil.

7. Reduce gasoline coupon issue by 10%, except for emergency vehicles.	Dir., PWD.
8. Advise public, airlines, canneries, shipping companies, etc. of reductions and methods.	Governor’s Press Secretary through all available media; Port Admin; Dir., TEO.
9. Monitor all above; advise Governor with recommendation(s).	Dir., TEO.

V. THE PLAN – PHASE 3

A. This Phase requires an additional 10% (based on normal daily rates) reduction, in energy and fuel usage. If Phase 2 has not been invoked, a 20% reduction is required.

B. Actions and Responsibilities

<u>Actions</u>	<u>Responsible Office/Agency</u>
1. Reduce electricity generated to a level which will require only 80% of normal fuel consumption. Advise Governor, TEO of method to be used, e.g., power rationing, etc.	Exec. Dir., ASPA.
2. Reduce amount of fuel sold to fishing vessels to 80% of normal.	Marlex; Union Oil; canneries.
3. Reduce U.S. airline and military flights to 80% of normal.	SPIA; MAC; other U.S. airlines.
4. Reduce fuel sales to foreign airlines and military services to 80% of normal.	Marlex.
5. Reduce motor gasoline deliveries to retail and ASG service stations to 80% of normal.	Marlex; Union Oil.
6. In addition to odd-even sale days, limit sales of motor gasoline to Monday through Saturday, with a 5 gallon minimum sale.	Marlex; Union Oil; service station operators.
7. Reduce gasoline coupon issue to 80% of normal, except for emergency vehicles.	Dir., PWD.
8. Advise public, canneries, airlines, shipping lines, etc. of reductions.	Governor’s Press Secretary through all available media; Port Admin.; Dir., TEO.

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9. Monitor all above and advise Governor with recommendation(s).	Dir., TEO.
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VI. THE PLAN – PHASE 4

A. This Phase requires a further reduction of 20% of normal energy and fuel usage, or, if Phases 2 and/or 3 have not been previously invoked, a 40% reduction in usage. Because the canneries are of such importance to the economic health of the Territory, the total of the 40% reduction may require a greater cut in some sectors to maintain an acceptable level of cannery operation. This level will be determined by the Emergency Energy Conservation Task Force.

B. Actions and Responsibilities

<u>Actions</u>	<u>Responsible Office/Agency</u>
1. Reduce electricity generated to a level which will require only 60% of normal fuel consumption, but insure that the canneries get a least 60% of normal supply. Advise Gov., TEO how.	Exec. Director, ASPA.
2. Reduce amount of fuel sold to fishing vessels to 60% of normal.	Marlex; Union Oil; Canneries.
3. Reduce U.S. airline and military flights to 60% of normal.	SPIA; MAC; other U.S. airlines.
4. Suspend fuel sales to foreign airlines and military services.	Marlex.
5. Reduce motor gasoline deliveries to retail service stations and ASG to 60% of normal.	Marlex; Union Oil.
6. Limit motor gasoline sales to M., T., Th., Fri. only, with 5 gallon minimum purchase.	Governor; Marlex; Union Oil.
7. Reduce gasoline coupon issue to 60% of normal, except emergency vehicles.	Dir., PWD.
8. Advise public, etc. of reductions.	Gov's. Press Secretary through all available media; Port Admin., TEO.
9. Monitor all above and advise Governor, with recommendation(s).	Dir., TEO.

VII. THE PLAN – PHASE 5

A. In this Phase maximum energy and fuel savings will be required.

B. Actions and Responsibilities

<u>Actions</u>	<u>Responsible Office/Agency</u>
1. Reduce electricity generation to minimum for public health and safety. Advise TEO.	Exec. Dir., ASPA.
2. Deliver/sell diesel fuel to ASPA, airport, LBJ hospital Communications, WVUV and PWD only.	Marlex; Union Oil.
3. Reduce sales of jet fuel to 40% of normal.	Marlex.
4. Reduce sales of motor fuel to Monday and Thursday only, except for Aiga buses and taxis. Designate specific hours and days for Aiga bus and taxi sales. Sales to private vehicle owners will be odd license numbers on Monday, even on Thursday. Advise TEO.	Marlex; Union Oil
5. Reduce motor gasoline and diesel issues to emergency vehicles only. Advise TEO.	Director, PWD.
6. Coordinate with ASP A and Emergency Energy Conservation Task Force to establish water hours to reduce electricity demand. Advise TEO.	Director, PWD.
7. Advise Governor, with recommendations regarding above actions.	Dir., TEO.
8. Publicize above measures.	Gov's. Press Secretary through all available media.

History: Rule 2-82 (Ex. Ord. 3-82), eff 2 Jul 82, § 2.

Appendix I – Fuel Consumption by Type
Thousands of gallons/day

Diesel Fuel

Total Storage Capacity	
Utulei Tank farm	6,174,000
ASPA	

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Satala	48,000
Tafuna	200,000
LBJ Hospital	8,500
Canneries	39,000
	6,469,500 gals.

Daily usage rate 105,610 gal/day = 61 days supply available

Reduced 10% 95,050 = 68 “
 20% 84,490 = 76 “
 40% 63,370 = 102 “

Starting with ½ of total storage capacity = 3,234,750 gals

Daily usage rate 105,610 gals/day = 31 days
 Reduced 10% 95,050 = 34 “
 20% 84,490 = 38 “
 40% 63,370 = 51 “

Starting with ½ of Utulei tank farm only = 3,087,000 gals.

Daily usage rate 105,610 gals/day = 29 days
 Reduced 10% 95,050 = 32 “
 20% 84,490 = 36 “
 40% 63,370 = 48 “

A planned increase of 4,746,000 gallons of storage capacity at the Utulei tank farm will, when completed, increase the “days supply available” by approximately 40%. Completion is anticipated within the next year.

Jet Fuel

Total Storage Capacity

Utulei Tank Farm 1,801,000 gals.
 Airport 110,000

 1,911,000 gals.

Daily usage rate 30,000 gallons = 63 days supply available

Reduced 10% 27,000 = 71 “
 20% 24,000 = 79 “
 40% 18,000 = 106 “

Starting with ½ of total capacity = 955,500 gals.

Daily usage rate 30,000 gallons = 33 days
 Reduced 10% 27,000 = 37 “
 20% 24,000 = 42 “

40% 18,000 = 56 “

Starting with ½ of Utulei tank farm only = 900,500 gals.

Daily usage rate 30,000 gallons = 30 days

Reduced 10% 27,000 = 33 “

20% 24,000 = 37 “

40% 18,000 = 50 “

Motor Gasoline

Total Storage Capacity, Utulei Tank Farm

Unleaded 512,400 gals.

Airport 411,600

 924,000 gals.

Daily usage rate (unleaded) 6499 gals/day = 79 days supply available

Reduced 10% 5480 = 87 days supply available

20% 5200 = 98 days supply available

40% 3900 = 121 days supply available

Daily usage rate (regular) 2906 gals/day = 142 days supply available

Reduced 10% 2615 = 157 days supply available

20% 2325 = 177 days supply available

40% 1744 = 236 days supply available

With ½ of Utulei tank farm capacity, = 157 days supply available

Unleaded 256200 gals

Regular 205800

Daily usage rate (unleaded) 6499 gals/day = 39 days supply available

Reduced 10% 5850 = 43 days supply available

20% 5200 = 49 days supply available

40% 3900 = 65 days supply available

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Daily usage rate (regular) 2906 gals/day = 71 days supply available

Reduced 10% 2615 = 79 days supply available

20% 2325 = 89 days supply available

40% 1744 = 118 days supply available

Combined (unleaded and regular) normal daily usage rate = 9405 gals/day

Aviation Gasoline

Storage Capacity

Utulei Tank Farm 100,800 gals.

Airport 25,200

126,000 gals.

Daily usage rate 230 gals. = 548 days supply available

History: Rule 2-82 (Ex. Ord. 3-82), eff 2 Jul 82, § 2.

Appendix II – Emergency Energy Conservation Task Force

I. GENERAL

The American Samoa Emergency Energy Conservation Plan, of which this Appendix is a part, requires, in Phase I, that an Emergency Energy Conservation Task Force be convened. The primary purpose of this Task Force is to advise the Governor regarding specific measures to be taken to conserve fuel in the event Phase V of the Plan is invoked. Phase V is the “extreme emergency” situation in which all fuel/ energy consuming activities other than those relating to public health and safety are to be severely curtailed. In addition, the Task Force may also make recommendations to the Governor regarding any Phase of the Plan.

II. MEMBERSHIP

The membership of the Task Force is:

Lieutenant Governor -Chairman

Director, Territorial Energy Office

Attorney General

Secretary of Samoan Affairs

Commissioner of Public Safety

Director, Department of Medical Services

Director, Department of Public Works

Director, Department of Port Administration

Director, Office of Public Information Executive

Director, American Samoa Power Authority

Member, Senate

Member, House of Representatives

Manager, Marlex Petroleum

Manager, Union Oil Company

Manager, Van Camp Seafood Co.

Manager, Starkist Samoa, Inc.

Chairman, Chamber of Commerce

Because it is expected that this Task Force will operate only in an emergency situation, attendance by the members at each meeting is required. If, for reasons of illness or being off-island, a member cannot attend he will designate an alternate to attend in his absence.

III. DUTIES AND RESPONSIBILITIES

The Task Force will convene initially at the call of the Governor and thereafter at the call of the Chairman. It shall:

- A. Determine the level and distribution of electric power to be generated to satisfy public health and safety requirements. Advise the Executive Director, ASPA;
- B. Determine and specify those vehicles which will be classified as emergency vehicles. Establish means of identification to permit issue of fuel. Advise Department/Agency heads concerned;
- C. Determine priorities for water use and water hours; advise Director, Department of Public Works.
- D. Examine all actions already implemented or planned under the Plan and recommend changes as the situation warrants.

- E. Perform such other services relating to the energy emergency as may be required by the Governor.

History: Rule 2-82 (Ex. Ord. 3-82), eff 2 Jul 82, § 2

TITLE 12 – CHAPTER 06 – REGULATIONS OF LOCAL TELECOMMUNICATIONS OPERATIONS

Sections:

- 12.0601 Purpose.
- 12.0602 Definitions.
- 12.0603 Duties of Telecommunications Carriers.
- 12.0604 Jurisdiction.
- 12.0605 Procedures.
- 12.0606 Judicial Review.
- 12.0607 Declaration of an Emergency.

12.0601 Purpose.

The purpose of this chapter is to provide for the regulations of local telecommunications operations in American Samoa in a manner which serves the public interest. The objectives of such regulations shall be:

- A. To promote the rapid development of efficient, modern, and advanced telecommunications facilities and technologies;
- B. To provide consumers access to high-quality telecommunications services at reasonable prices; and
- C. To facilitate competition in the telecommunications marketplace on reasonable terms and conditions.

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

12.0602 Definitions.

- A. “Telecommunications Regulatory Commissioner” or “Commissioner” means the Governor of American Samoa.
- B. “Telecommunications carrier” means any person engaged as a common carrier in providing telecommunications service for hire.

- C. “Local” means within the Territory of American Samoa.

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

12.0603 Duties of Telecommunications Carriers.

It shall be the duty of every telecommunications carrier providing local service in American Samoa:

- A. To provide such telecommunications service upon the reasonable request of any party;
- B. To establish interconnection with other telecommunications carriers, subject to the orders of the Commissioner;
- C. To establish charges, practices, classifications, terms, and conditions for telecommunications services which are just and reasonable;
- D. Not to make any unjust or unreasonable discrimination in charges, practices, classifications, terms, conditions, facilities, or services, directly or indirectly, by any means or device, nor to give any undue or unreasonable preference, advantage, or disadvantage to any person or class of persons;
- E. To publish its rates, terms, and conditions for telecommunications services, including interconnection, in the manner prescribed by the Commissioner; and
- F. To cooperate in the proceedings of the Commissioner and to comply with the orders of the Commissioner.

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

12.0604 Jurisdiction.

The Telecommunications Regulatory Commissioner shall have regulatory jurisdiction with respect to the local operations of telecommunications carriers in American Samoa. The Commissioner shall perform the functions of the “state commissioner” for

American Samoa under the Federal Communications Act, 47 U.S.C. §153(41).

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

12.0605 Procedures.

- A. Pleadings. Pleadings before the Commissioner shall be informal. Proceedings may be initiated by application, petition, complaint, or other form of pleading as may be appropriate under the circumstances.
- B. Proceedings. Proceedings may be initiated by an initial pleading or by the Commissioner. When a proceeding has been initiated, the Commissioner shall give public notice of the proceeding and shall proscribe the time within which responsive pleadings or comments may be filed.
- C. Presiding Officers. Where a proceeding involves contested matters, the Commissioner may appoint a Presiding Officer to conduct the proceeding. The Presiding Officer shall convene such meetings, hearings conferences or other sessions as the Presiding Officers deems appropriate. The Presiding Officer shall prescribe the schedule and form for the submission of evidence, briefs, and arguments.
- D. Settlement. The Presiding Officer shall encourage parties to negotiate and to resolve contested matters by mutual agreement. Concession and offers of compromise are inadmissible at any such meetings, hearings, conferences, or other sessions.
- E. Discovery. Any party may move the Presiding Officer for the production of other evidence in the possession of another party. Discovery shall be granted only upon a showing that material evidence is likely to be obtained. The Presiding Officer may place reasonable limits on any discovery.
- F. Recommended Decision. The Presiding Officer shall make a recommended decision to the Commissioner. In the recommended decision the Presiding Officer shall provide an opportunity for the submission of objections to the

recommended decision. Any objection not submitted in accordance with the recommended decision shall be waived.

- G. Final Decision. The final decision shall be made by the Commissioner. The Commissioner may accept the recommended decision, accept the recommended decision with modifications, or reject the recommended decision. An order by the Commissioner remanding a proceeding to the Presiding Officer for further action shall not be a final decision.

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

12.0606 Judicial Review.

Any party to a proceeding before the Commissioner which is aggrieved by a final decision of the Commissioner may petition for review of such decision by the High Court of American Samoa pursuant to A.S.C.A 4.1040 through 4.1044, except where preempted by federal law.

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

12.0607 Declaration of an Emergency.

- A. Pursuant to A.S.C.A. 4.1010, if an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 20 days notice and states in writing its reasons for that finding it may proceed without prior notice or hearing.
- B. The Telecommunications Regulatory Commissioner finds that fact exist which justifies adoption of the foregoing regulation upon fewer than 20 days notice, to wit:
 - 1. The foregoing rules are rules of procedure and do not effect substantive rights.
 - 2. The Telecommunications Act of 1934, as amended in 1996, requires incumbent local communications carriers to allow for interconnection of telecommunications services with communications carriers

entering the market. Pursuant to federal law, the Telecommunications Regulatory Commissioner is required to accept or reject such interconnection agreements.

3. The Commissioner has received a request for an interconnection agreement which is presently under consideration. Because of certain time constraints imposed by federal law as regards the consideration of the interconnection agreement, insufficient time exists to give notice as provided by A.S.C.A. 4.1010.
4. Based on the foregoing findings the Commissioner finds that imminent peril to the public health, safety, and welfare requires adoption of the foregoing rule immediately upon filing the same as provided in A.S.C.A. 4.1008 upon fewer than 20 days notice. According to law the foregoing rule will be effective for a period of 120 days from the effective date.

Editors Note – 11 Dec 21: The text for this Rule is found on the American Samoa Bar Association Website. No other source for this Rule was found but is included at face value and accorded weight by virtue of it being posted by an Officer of the Court.

END OF TITLE 12 – PUBLIC UTILITIES

TITLE 13 – EDUCATIONAL INSTITUTIONS

Chapters:

- 01 Student Financial Aid
- 02 Tuition Rates and Fees at American Samoa Community College

TITLE 13 – CHAPTER 01 – STUDENT FINANCIAL AID

Sections:

- 13.0101 Authority.
- 13.0102 Definitions.
- 13.0103 Financial aid categories.
- 13.0104 Allocations of available moneys.
- 13.0105 Eligibility.
- 13.0106 Applications.
- 13.0107 Letters of reference and interviews.
- 13.0108 Selection criteria of financial aid awards.
- 13.0109 Award amounts.
- 13.0110 Travel grants.
- 13.0111 Financial aid contracts.
- 13.0112 Duration and renewal of financial aid.
- 13.0113 Financial aid conditions.
- 13.0114 Advanced degree student.
- 13.0115 Government employee students.
- 13.0116 Special duties of officers and employees.

13.0101 Authority.

The rules adopted in this chapter are adopted under the authority of 16.2504(a)(1) A.S.C.A.

History: Rule 10-80, eff 20 Aug 80, § 1; repealed and replaced by Rule 1-38 eff 25 May 88, §§ 1,2.

13.0102 Definitions.

As used in the chapter unless the context otherwise requires:

- (a) “Administrator” means a person hired by the board to administer the financial aid program.
- (b) “Board” means the student financial aid board.
- (c) “Chairman” means the chairman of the board elected from among its members in January each year by the members of the board.

- (d) “Secretary” means the secretary of the board elected from among its members in January of each year by the members of the board.
- (e) “Cumulative GPA” means the cumulative grade point average.
- (f) “Education costs” means those costs of a student’s tuition, laboratory fees, books and supplies, room and board, and college offered health or hospital insurance coverage.
- (g) “Educational institution” means an accredited 4-year institute of higher learning.
- (h) “Financial aid” means a scholarship, grant, loan, or any other monetary assistance provided by the board for postsecondary education.
- (i) “Financial need” means need for financial assistance as defined in the federal at 20 USC 1089, as amended, and as further defined by or qualified in the Code of Federal Regulations.
- (j) “Full-time student” means a student attending an educational institution taking not less than 12 credit hours per academic term or semester. Repeated courses are excluded in determining credit hours.
- (k) “Fund” means the American Samoa Government Student Financial Aid Fund.
- (l) “Job opportunity reports” means the reports prepared by the offices of Manpower Resources and Development Planning annually on potential public and private enterprise employment opportunity for college graduates and bi-ennially on 5-year projected public and private enterprise employment needs pursuant to 16.2512 A.S.C.A.
- (m) “SAT” means the Scholastic Aptitude Test.
- (n) “Scholastic achievement” means the results of competitive college entrance examinations, TOEFL, the student’s cumulative GPA, and other general academic projects completed while attending a secondary educational institution.
- (o) “Student” means a person enrolled and regularly pursuing studies at an education institution.

- (p) “TOEFL” means the Test of English as a Foreign Language.

History: Rule 10-80, eff 20 Aug 80, § 2; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0103 Financial aid categories.

- (a) The categories of awarding student financial aid are:

- (1) Scholarships. Scholarships are awarded to eligible applicants based solely upon the applicant’s competitive college entrance examination scores, TOEFL or SAT and GPA, without regard to financial need.
- (2) Grants-in-aid. Grants-in-aid are awarded to eligible applicants pursuing specific areas of study or research which are designated by the board as areas of particular need and importance in American Samoa based upon the applicant’s scholastic achievement, without regard to financial need. Specific areas of study or research of particular need and importance in American Samoa shall be determined and published no later than June 20 every year. In designating such areas of study or research, the board shall take into account the current job opportunity reports on projected employment needs, and established the priority of each area.
- (3) Student loans. Student loans are awarded to eligible applicants based solely upon the applicant’s financial need.

- (b) Applicants may apply for more than one category of financial aid except advanced degree students and government employee students.

History: Rule 10-80, eff 20 Aug 80, § 3; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0104 Allocations of available moneys.

- (a) By January 1,1990, not less than 10 percent of the moneys available in the fund each year shall be allocated to scholarships.
- (b) The remainder of the moneys available in the fund each year shall be allocated to grantsinaid, student loans and program expenses. The moneys allocated to grants-in-aid and student loans shall be determined by the board each year

according to its assessment of the allocation most beneficial to American Samoa considering the amount of moneys available in the fund, priorities of designated areas of study or research of particular need and importance in American Samoa and the number of eligible and qualified applicants for grants-in-aid the number of eligible applicants having financial need for student loans and other relevant factors.

History: Rule 10-80. eff 20 Aug 80, § 4; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0105 Eligibility.

Financial aid may only be awarded to an applicant who:

- (1) is a United States national or citizen, or an American Samoan as defined in 41.0202(1) (c) A.S.C.A., or a permanent resident in accordance with 41.0401 A.S.C.A., et seq., or a person legally adopted in accordance with 45.0401 A.S.C.A., et seq.; and
- (2) is a legal resident of American Samoa as defined in 6.02 12 A.S.C.A., and in compliance with applicable territorial immigration laws except that the residence of the parents or legal guardians of a minor shall be presumed to be the legal residence of that minor; and
- (3) has been accepted to or is attending an educational institution.

History: Rule 10-80, eff 20 Aug 80, § 5; repealed and replaced by Rule 1-88, eff 25 May, 88, §§ 1,2.

13.0106 Applications.

All applications for financial aid shall be made on forms approved by the board. Applications shall contain information establishing eligibility to the board’s satisfaction, and state anticipated areas of study and occupational or professional preferences.

History: Rule 10-80, eff 20 Aug. 80, § 6; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1, 2.

13.0107 Letters of reference and interviews.

- (a) Each applicant shall submit to the board at least 3 letters of reference or support from teachers, counselors, principals, employers and other persons with specific knowledge of the

applicant's character and abilities before receiving any award of financial aid.

- (b) Each applicant may be interviewed by the board at a scheduled time and place to verify the applicant's eligibility and other application statements and to assess the applicant's character and abilities.

History: Rule 10-80, eff 20 Aug 80, § 7; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0108 Selection criteria of financial aid awards.

- (a) On scholarships for high school graduates, the minimum scholastic achievement for scholarship awards are a TOEFL test score of 580 or SAT combined test score of 900, and a 3.6 out of 4.0 cumulative GPA. For ASCC graduates, the minimum scholastic achievement for scholarship are a cumulative GPA of 3.2, a TOEFL test score of 580 and at least 48 acceptable credit hours from an off-island educational institution. For off-island applicants, the minimum scholastic achievement for scholarship are a cumulative GPA of 2.5 and at least 48 acceptable credit hours from an off-island educational institution. The number of scholarships available each year shall be awarded according to the competitive ranking of the eligible applicants as determined by their college entrance examination test scores, TOEFL test score or SAT combined test score, and cumulative GPA. For each of the three criteria, numbers shall be assigned to each eligible applicant, based upon the number of applicants, with the highest number assigned to the first in rank. Composite averaging of the assigned members shall then be made to determine the final competitive ranking of the eligible applicants.

- (b) Grants-in-aid. For college students the minimum scholastic achievement for GPA are a 3.0 out of 4.0 cumulative GPA, and at least 45 acceptable credit hours from an off-island educational institution. Grants-in aid shall be awarded according to the competitive ranking of the eligible applicants, who have chosen designated areas of study or research of particular need, as determined by their TOEFL test score or SAT

combined test score, and cumulative GPA. For each of the two criteria, with respect to each designated area of study or research numbers shall be assigned to each eligible applicant, based upon the number of applicants, with the highest number assigned to the first in rank. Composite averaging of the assigned numbers shall then be made to determine the final composite ranking of the eligible applicants.

- (c) Student loans. For college students the minimum requirements for applicants is that the be a full-time student in an accredited institution of higher learning, maintaining a minimum of 2.0 GPA, and parental (combined) income must be less than the poverty income level currently established by the U.S. Government; applicant must agree to begin payback two years after receiving a bachelor's degree. Applications must include the latest tax return of the family or legal guardians, and a listing of the number of dependents in the family. Parents or legal guardians must cosign the application.

History: Rule 40-80, eff 20 Aug 80, § 8; repealed and replaced by Rule 1-88, eff 25 May 88. § 1,2.

13.0109 Award amounts.

- (a) Scholarships shall be for uniform amounts as determined and published by the board prior to the competitive examinations of applications each year, without regard to other financial assistance available to the recipient, excluding travel grants.
- (b) Grants-in-aid and student loans shall be in amounts adequate to meet education costs less all other financial assistance available to each recipient, excluding travel grants. A limit will be published every year by the board.

History: Rule 10-80, eff 20 Aug 80, § 9; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0110 Travel grants.

- (a) In addition to the amount of any financial aid, each recipient of financial aid shall be provided air transportation at the standard economy rate for commercial air carriers from American Samoa to the recipient's educational institution upon the initial award. Return air transportation at the same rate to American Samoa, and a

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personal effects allowance of \$500 maximum paid in cash, shall be provided each recipient who satisfactorily completes degree requirements as specified by the recipient's educational institution. The cash personal effects allowance is intended to permit a successful recipient to ship books and other educational materials and personal effects accumulated during the course of study back to American Samoa.

- (b) Air transportation at the standard economy rate for commercial carriers to American Samoa shall not be provided any recipient who does not complete degree requirements due to failure.
- (c) All other transportation expense, whether for persons or things, is the recipient's responsibility.
- (d) The board will not be responsible for transportation costs of any recipient to attend personal affairs including weddings, funerals, graduations.

History: Rule 10-80, eff 20 Aug 80, § 10; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0111 Financial aid contracts.

- (a) Financial aid shall be awarded by contract containing the conditions of the award. Each financial aid category shall have a standard and uniform contract approved by the Attorney General.
- (b) Financial aid contracts shall contain provisions governing the following matters:
 - (1) The amount and duration of the award.
 - (2) The amounts to be paid directly to the recipient or to the educational institution, or both. For this purpose, categories of education may be specifically identified.
 - (3) Reduction in the amount awarded for a grant-in-aid or student loan by the amount the recipient may later receive in the form of an extra-territorial scholarship, grant, fellowship or other type of financial assistance. This requirement does not apply to scholarships.

- (4) Cancellation of the financial aid awarded, and reimbursement of the amounts expended or a pro rata share thereof, if the recipient fails to meet the conditions set forth in 13.0112. Those conditions shall be expressly stated in the contract.
- (5) Repayment of the amount awarded and extended for a grant-in-aid or student loan plus reasonable interest. The repayment schedule and interest rate shall be expressly stated in the contract.
- (6) The recipient's promise to be employed by the government or private enterprise in American Samoa in a position related to the recipient's chosen area of study for a period of time equal to number of scholastic years financed by the board.
- (7) Waiver of repayment of the amounts awarded and expended for a grant-in-aid in full or part based on the ratio the years of employment by the government or private enterprise in American Samoa in positions related to the recipient's chosen area of study bears to the number of scholastic years financed by the board.
- (8) The major area of study which the recipient will pursue during the period of the grant or scholarship. The recipient cannot deviate from this field for the duration of the financial aid.

- (e) The chairman, or his or her designee as authorized in writing, shall sign all financial aid contracts on behalf of the American Samoa Government.

History: Rule 10-80, eff 20 Aug 80, § 11; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0112 Duration and renewal of financial aid.

- (a) Financial aid shall be awarded for one scholastic year at a time unless the board determines financial aid for a specific recipient should be of longer or shorter duration due to special or unique circumstances.
- (b) A recipient who complies with the conditions set forth in 13.0112 and his or her financial aid

contract and remains eligible shall be given priority consideration for renewal of financial aid in the category initially awarded to complete the recipient's chosen area of study or research when the recipient applies for renewal of the financial rule upon expiration of each financial aid term awarded. Renewal contracts shall be modified in accordance with the board's current rules.

History: Rule 10-80, eff 20 Aug 80, § 12; repealed and replaced by Rule 1-88, eff 25 May 88, §§ 1,2.

13.0113 Financial aid conditions.

Financial aid may be cancelled by the board if the recipient:

- (1) is not a full-time student; or
- (2) does not comply with the policy of his or her educational institution governing overall grade point averages, including any probationary periods provided by that policy; or
- (3) does not authorize the registrar or his or her educational institution to send a copy of his or her grade reports or transcript to the board after each academic semester or other term; or
- (4) transfers to another educational institution without the board's prior written authorization; or
- (5) changes his or her major areas of study without the board's prior written approval;
- (6) does not maintain a cumulative GPA of at least 2.5.

History: Rule 1-88, eff 25 May 88, §§ 1,2.

13.0114 Advanced-degree student.

Selection for grants-in-aid will be based on professional preference catering to the need of the territory.

History: Rule 1-88, eff 25 May 88, §§ 1,2.

13.0115 Government employee students.

Grants-in-aid will be awarded to those ASG employees based on merit and professional preference. Recommendation will be submitted by the Director of Manpower Resources and the respective department, office, or other agency head.

History: Rule 1-88, eff 25 May 88, §§ 1,2.

13.0116 Special duties of officers and employees.

- (a) The chairman, or his or her designee authorized in writing, shall sign all financial aid contracts on behalf of the American Samoa Government.
- (b) The Director of Education shall be responsible for:
 - (1) the custody and care of all applications for financial aid, documents related thereto, and the records on board actions on all applications; and
 - (2) the transmittal of the annual job opportunity reports on potential employment opportunities to financial aid recipients who are expected to graduate during the current fiscal year, and the biennial job opportunity reports on projected employment needs to all high schools in American Samoa, the American Samoa Community College, and financial aid recipients;
 - (3) the overseeing and coordinating approved payments of all financial aid awards and travel grants in a timely manner; and
 - (4) ensuring implementation of the policies and procedures established by the financial aid laws and rules, determine compliance with financial aid contracts, and approve proper payments of all financial aid awards and travel grants in a timely manner.

History: Rule 1-88, eff 25 May 88, § 1,2.

TITLE 13 – CHAPTER 02 – TUITION RATES AND FEES AT AMERICAN SAMOA COMMUNITY COLLEGE

Sections:

- | | |
|---------|-------------------------|
| 13.0201 | Authority. |
| 13.0202 | Tuition. |
| 13.0203 | Other fees and charges. |
-

13.0201 Authority.

The rule codified in this-section and 13.0202 and 13.0203 A.S.A.C., is adopted under-the authority of 16.2002(b)(5) A.S.C.A.

History: Rule 19-33, eff 28 Dec 83, § 1.

13.0202 Tuition.

Tuition at the American Samoa Community College for each term, beginning the first term of the 1983-1984 college year, is as follows:

- (1) American Samoans, U.S. nationals, permanent residents certified by the Immigration Board, and U.S. citizens: \$2 per credit, with a maximum of \$24 per term;
- (2) All others residing in American Samoa under authorization of the Immigration Board: \$3 per credit, with a maximum of \$36 per term;
- (3) Nonresident aliens upon authorization of the Immigration Board: \$4 per credit, with a maximum of \$48 per term.

History: Rule 19-83, eff 28 Dec 83, § 2.

13.0203 Other fees and charges.

Other fees and charges at the American Samoa Community College are as follows:

- (1) Change of registration fee: \$5;
- (2) Late registration fee: \$10;
- (3) Noncredit courses: variable to cover the cost of instruction (e.g., teachers \$10 per hour; supplies used; etc.);
- (4) Laboratory fees: variable to cover the cost of laboratory operation (e.g., cost of supplies and special laboratory materials, etc.);
- (5) Student activity fee: \$5;
- (6) Library fines: cost of replacement if not returned;
- (7) Breakage or lost equipment fee: cost of replacement;
- (8) Graduation fee: \$10;
- (9) Official transcript fee: \$2 per copy.

History: Rule 19-83, eff 28 Dec 83, § 3.

TITLE 15 – PARKS AND RECREATION

Chapters:

- 01 General
- 02 Commercial Activities
- 03 Noncommercial Activities
- 04 Picnics
- 05 Golf
- 06 Temporary Food Concessions

TITLE 15 – CHAPTER 01 – GENERAL

Sections:

- 15.0101 Findings and purpose.
- 15.0102 Applicability and scope.
- 15.0103 Definitions.
- 15.0104 Hours.
- 15.0105 Severability.
- 15.0106 Penalties.

15.0101 Findings and purpose.

- (a) The director of parks and recreation has determined that certain commercial activities may be allowed in limited numbers and under controlled conditions within selected park areas under the management and control of the department of parks and recreation.
- (b) it has been further established, that these commercial activities will favorably contribute toward the ability of the general public to enjoy and utilize certain park areas and facilities. These activities, however, will result in increased administrative costs to the department. Therefore, the system which allows these commercial uses should ensure that the public is properly recompensed for the additional costs incurred.
- (c) Finally, it is recognized that commercial activities within the park system exist as a privilege, not as a right. Therefore, all reasonable measures by the department of parks and recreation to minimize the adverse impacts of these activities upon the general public and upon park capacities, are just and proper. These measures may include, but are not limited to, temporarily or permanently curtailing at any location, one or more commercial activities that

may have become incompatible due to changes in circumstances.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0102 Applicability and scope.

These rules shall apply to all areas of the park system under the jurisdiction of the director as defined in Chapter 2 of Title 18, A.S.C.A. The purpose of these rules is to govern the use and protection of the Territorial Park System.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0103 Definitions.

As used in these rules, unless the context requires otherwise:

- (a) “Accessory activity” means a use which is incidental and subordinate to an authorized activity.
- (b) “Applicant” means an individual, group or organization who has made a formal request or petition to the department for a determination upon a commercial activity or for the purpose of securing a permit.
- (c) “Authorized activity” means a commercial use which has been properly reviewed and approved under these rules.
- (d) “Authorized representative” means any person legally or otherwise properly designated to act for the director.
- (e) A “boat” means any form of vessel capable of floating in the water and includes but is not limited to motor boats, sail boats, canoes, barges, and sail boards. For purposes of these rules a “boat” does not include swimming floaters or other authorized swimming equipment.
- (f) “Camping” means the act of sleeping during nighttime hours on the premises or the use or occupation of the premises by one or more persons who remain or intend to remain on the premises at any time between the hours of 10:00 p.m. and 6:00 a.m.
- (g) “Commercial activity” means a use or purpose designed for profit, which includes the exchange or buying and selling of commodities, or the

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providing of services, or relating to or connected with trade, traffic or commerce in general.

- (h) “Commission” means the parks and recreation commission created in Chapter 1, Title 18, A.S.C.A.
- (i) “Department” means the department of parks and recreation, Territory of American Samoa.
- (j) “Director” means the director of the department of parks and recreation, American Samoa Government.
- (k) “Government” means the American Samoa Government.
- (l) “Nonprofit organization” means any organization, club, family, or eleemosynary corporation which does not conduct business for profit on a regular basis.
- (m) “Park” means any area set aside, at the time of publication or any time thereafter by statute, by the territorial planning commission, by the zoning board, or by the department as territorial parks, community parks, territorial recreation facilities, community recreation facilities, historical and prehistoric objects and sites, and all facilities located in those areas. As of adoption, of these rules, the designated parks are: Onesosopo Park, Pago Park, the area on the seaside of the main highway in Malaloa between Burns-Philp and the yacht quay, Utulei Beach Park (from the Rainmaker Hotel to Morris Scanlan’s Gas Station), Faga’alu Park, Lions’ Park (Tafuna, including the tennis courts), the Ili’ili Golf Course, and Amanave Park, and the water adjacent to these land areas out to the 10 fathom curve. A map of these parks is attached to the end of this title as Appendix A.
- (n) “Park system” means all “parks” as defined above and all underwater land and water areas of the Territory of American Samoa extending from the mean high water line seaward to the 10 fathom curve.
- (o) “Permittee” means an individual, group or organization who has requested and received permission to conduct an authorized activity according to these rules.

- (p) “Picnic” means an outing with food and refreshments and which may include games, music or other, activities for the enjoyment of its members.

History: Rule 17-87 eff 24 Dec 87, § 2.

15.0104 Hours.

With the exception of the Ili’ili golf course, all parks are open to the public between the hours of 5:00 a.m. and 10:00 p.m., and closed to the public during other hours. Only activities authorized by permit will be allowed during the hours the parks are closed.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0105 Severability.

If any provision of these rules and regulations, or the application of such provision, is held to be invalid, the remaining portions of these regulations or the application of said portions shall not be affected.

History: Rule 37-87. eff 24 Dec 87, § 2.

15.0106 Penalties.

Any person found in violation of these rules and regulations in this title may be subjected to a fine of up to \$250 or denied use of territorial parks for the purpose requested, or both. Certain violations can be punished by imprisonment for up to 6 months, a \$500 fine, or both, for each violation. (Authority: 18.0203(8) and 18.0208 A.S.C.A).

History: Rule 17-87. eff 24 Dec 87, § 2.

TITLE 15 – CHAPTER 02 – COMMERCIAL ACTIVITIES

Sections:

- 15.0201 Commercial activities.
- 15.0202 Authorized activity designation.
- 15.0203 Public hearing.
- 15.0204 Criteria.
- 15.0205 Revocation of authorized activity designation.
- 15.0206 Advertisements.
- 15.0207 Business operations.

15.0201 Commercial activities.

All commercial activities within the territorial parks are subject to a system of regulation. Only authorized

commercial activities shall be allowed within territorial parks.

History: Rule 17-87. eff 24 Dec 87, § 2.

15.0202 Authorized activity designation.

- (a) A commercial activity may receive an authorized activity designation only after proper application has been made to the department, a public hearing has been held (see 15.0203), and the application has been approved by the director and the commission.
- (b) Unless stated otherwise, authorized activity designations will be valid for 1 year from the date of issuance.
- (c) The fee for obtaining an authorized activity designation is \$50 and is payable prior to issuance.

History: Rule 17-57. eff 24 Dec 87. § 2.

15.0203 Public hearing.

A public hearing is required before an authorized activity designation may be awarded. During the course of a public hearing upon an application for an authorized activity designation, the director or an authorized representative may accept and consider written and oral information from interested persons.

History: Rule 17-87, eff 24 Dec 87. § 2.

15.0204 Criteria.

Applications for authorized activity designations will be reviewed on the following criteria:

- (1) whether the activity is consistent with the nature of a particular park;
- (2) whether the facilities in a particular park or the facilities of the park system generally may be consistent with the needs of the applicant and the general public;
- (3) the extent to which the general public will be inconvenienced should the activity be authorized;
- (4) whether the applicant has the appropriate business license(s) to conduct the activity requested;

- (5) whether an appropriate fee should be assessed should the activity be authorized;
- (6) whether there exist appropriate parks or locations within parks where the activity should take place;
- (7) appropriate times or durations when the activity should occur;
- (8) The proper number of persons that should be allowed to participate in the activity; and
- (9) any other subject or condition which relates to the propriety of any designation or application.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0205 Revocation of authorized activity designation.

- (a) The director or an authorized representative must schedule a hearing, with notice given to the permit holder, to revoke or otherwise modify an authorized activity designation. During the course of such a hearing, information may be accepted from interested parties related but not limited to:
 - (1) changes in conditions subsequent to the granting of the authorized activity designation;
 - (2) the reasonableness of the conditions that may have been set forth in the granting of the designation; and
 - (3) any other factor which relates to the proposed revocation or modification of the authorized activity designation.
- (b) After such a hearing, the director may revoke, modify or continue the authorized activity designation, and must provide the applicant or the affected permittees with a written explanation for the action.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0206 Advertisements.

Commercial notices or advertisements shall not be displayed, posted or distributed within the parks except with the prior written permission of the director. This includes the distribution of flyers placed on unattended vehicles. Permission to

advertise may be granted only if the notices or advertisements relate to services, goods or facilities available within the premises, and the notices and advertisements are found by the director to be desirable and necessary for the convenience and guidance of the public.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0207 Business operations.

Engaging in or soliciting any business within the premises except in accordance with the provisions of an authorized activity designation, contract, license, lease, concession or other written agreement with the Government is prohibited.

History: Rule 17-87. eff 24 Dec 87, § 2.

TITLE 15 – CHAPTER 03 – NONCOMMERCIAL ACTIVITIES

Sections:

- 15.0301 Permits.
 - 15.0302 Activities not allowed.
 - 15.0303 Fees.
 - 15.0304 Applications for permits.
 - 15.0305 Denial of permits.
 - 15.0306 Revocation of permits.
 - 15.0307 Nonuse of permits.
 - 15.0308 Camping.
 - 15.0309 Unauthorized vehicles and equipment.
 - 15.0310 Boats and boating.
-

15.0301 Permits.

(a) Valid permits shall be issued only by the department. Duplicate copies will not be honored. Depending on the activity, the activity may also require a business license (See Chapter. 27.02 A.S.C.A.). The following activities when conducted within the park system require a permit:

- (1) Fund-raising Activities. All fund-raising activities shall be conducted only with a permit.
- (2) Area Reservations. Reservations to conduct noncommercial activities at specific sites within the park system require a permit.

- (3) Picnics and Parties. Picnics and parties in which 50 or more people are either expected or the organizers should reasonably expect to attend require a permit.
- (4) Camping. Camping requires a permit.
- (5) Sports. All scheduled sporting and athletic activities, including practices require a permit.
- (6) Food Concessions. Operators of food concession stands need permits, in addition to other health permits and business licenses required by statute.
- (7) Parking. Parking is permitted only in designated parking lots. Parking of vehicles in designated parking lots between the hours of 2:00 a.m. and 5:00 a.m. requires a permit.
- (8) Boating and Boats. Keeping a boat within the park system longer than 8 hours requires a permit.

(b) Permits shall be valid for the date(s) or times stated thereon. If no date or time is stated, the permit shall be valid for 24 hours.

History: Rule 17-37. eff 24 Dec 87. § 2.

15.0302 Activities not allowed.

The following activities, whether commercial or noncommercial, fundraising or nonfundraising, are not allowed and permits will not be issued:

- (a) washing of any vessel or vehicle;
- (b) commercial preparation of food by restaurants or food caterers, unless the preparer has an authorized activity designation;
- (e) The placing, discharging, disposing of, or removing by any process or in any manner any refuse (including fish bait and catch cleanings), garbage, dirt, ashes or cinders (except as authorized in 15.0401(h), mud, sand, gravel, sludge, or any chemical whatsoever.

History: Rule 17-87, eff 24 Dec 87. § 2.

15.0303 Fees.

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Except for permits issued to government agencies, all permits shall be subject to the following fees:

- (a) Permit Fees.
 - (1) Fund-raising activity, \$100;
 - (2) Nonfund-raising site reservation \$10.
- (b) Cleaning Fees. The following activities also require deposit of a refundable cleaning fee:
 - (1) Fund-raising activity, \$100;
 - (2) Picnics
 - (A) 0 through 50 people, free;
 - (B) 51 through 100 people, \$50;
 - (C) over 100 people, \$100.
- (c) Camping fees, \$2.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0304 Applications for permits.

The following conditions shall apply to permits:

- (a) In general, permits shall be issued on a first-come, first-served basis; however, depending upon the activity and the park involved, the department may implement a lottery system when the number of requests exceeds the number of permits allowed.
- (b) Persons 18 years of age or older may be eligible to secure permits.
- (c) Applications for permits shall be submitted in writing, on a form provided by the department, at least 2 working days in advance of the date of the planned activity.

Applications shall be submitted to the department at:

Department of Parks & Recreation
American Samoa Government
P.O. Box 1268
Tafuna, American Samoa 96799

- (d) Permit applications may be obtained between the hours of 7:30 a.m. and 4:00 p.m. on regular working days of the department, at the Department Office in Tafuna.
- (e) Permits shall be nontransferable.

- (f) Persons or organizations to whom permits are issued are bound by the permit conditions stipulated on or attached to the permit and any applicable federal and territorial laws, rules, and regulations.
- (g) The size of the groups as well as the length of time any permit may be in effect may be limited by the director or his authorized representative.
- (h) All payments of fees and charges shall be in cash, cashier's check, certified check, postal money order, bank money order, or a check preprinted with the name of the applicant (organization or person) preprinted and drawn on a local bank. A fee of \$5 will be charged for returned form nonpayment.
- (i) Upon request, permittees shall show the permit to an authorized representative and to any law enforcement officer.
- (j) There shall be reasonable limitations upon the number of permits issued to each applicant for every park location.
- (k) Other terms and conditions deemed by the director necessary to carry out the provisions of these rules, or any applicable federal or territorial statute, regulation, or rule.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0305 Denial of permits.

Application for permits may be denied when:

- (a) The park or park facilities requested are closed or will be closed because of damage, or because of scheduled or on-going construction, repairs or maintenance activities, or because of other reasons.
- (b) A state of emergency is declared by the director or other proper authorities.
- (c) Natural or civil disturbances, including but not limited to, tsunamis, floods, earthquakes, storms, riots, or demonstrations, occur or threaten to occur.
- (d) There are inadequate facilities to meet the needs of the applicant for the permit and the needs of the general public.

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- (e) The requested time or duration for the permit would exceed the limits as may be established elsewhere in these rules.
- (f) The requested number of people for the permit would exceed the limits as may be established elsewhere in these rules.
- (g) The request would exceed the number of permits authorized for that time and location, as may be established elsewhere in these rules.
- (h) The request is for use deemed by the director to be inconsistent with the public's interest in the safe and sanitary operation of the park system.

History: Rule 17-87, eff 24 Dec 87, § 2.

15.0306 Revocation of permits.

Permits may be revoked, cancelled or otherwise terminated at any time without prior notice when:

- (a) A state of emergency is declared by the director or other proper authorities.
- (b) Natural or civil disturbances, including but not limited to, tsunamis, floods, earth. quakes, storms, riots, or demonstrations occur or threaten to occur.
- (c) Permittees violate permit conditions or other provisions of these rules. (d) Fees are not paid as required.

History: Rule 17-87, eff 24 Dec 87, § 2.

15.0307 Nonuse of permits.

Failure to use a permit at the designated time and place, not due to an act of interference by the department shall not result in a refund or credit of fees previously paid, with the exception of the cleaning fee.

History: Rule 17-87, eff 24 Dec 87, § 2.

15.0308 Camping.

Camping is only permitted within the territorial park system with prior approval. A permit is required. Authorization to camp at a certain area must be endorsed by the department on the permit.

History: Rule 17-87, eff 24 Dec 87, § 2.

15.0309 Unauthorized vehicles and equipment.

- (a) No vehicle may be parked in a territorial park except in designated parking lots. No vehicle may be parked in a designated parking lot between the hours of 2:00 a.m. and 5:00 a.m. unless authorized by the department and endorsed on a valid permit.
- (b) The department is authorized to remove from park property and at the owner's expense any unauthorized boat, vehicle, or machinery or equipment.

History: Rule 17-87, eff 24 Dec 87, § 2.

15.0310 Boats and boating.

- (a) No boats may be operated in a careless or reckless manner when within waters included in the territorial park system so as to endanger the life or property of any person.
- (b) No boats may be in any park for longer than an 8-hour period unless authorized by the department and endorsed on a permit.
- (c) No boat may be operated in any park between the hours of 7:30 p.m. and 5:00 a.m.
- (d) No boats are allowed to sail, move, moor, anchor, or berth in designated swimming areas, except in case of emergency.
- (e) With the exception of when being launched and brought ashore, no commercial boats are allowed in any park at any time.
- (f) When operating within the 5 fathom curve and in waters adjoining territorial parks, recreational boats must be operated at speeds slower than 5 knots.
- (g) Recreational boats are only allowed to moor, anchor, or berth ashore in designated areas within the territorial parks.
- (h) The area seaward and to the west of the Pago Pago Yacht Club in Utulei is designated for aquatic activities, and recreational sailboats and canoes may be stored in that area and operated in the adjacent waters.

History: Rule 17-87, eff 24 Dec 87, § 2.

Section:
15.0401 General picnic and party rules.

15.0401 General picnic and party rules.

The following general rules shall apply to all picnics and parties held at any territorial park, except as otherwise noted:

- (a) Any picnic site at a territorial park may be used on a first-come first-served basis.
- (b) Picnic and party groups with less than 50 persons: Picnic and party groups with less than 50 persons are considered “family groups” and do not require a permit unless a specific site is reserved. See 15.0303 for the required fees.
- (c) Picnic and party groups consisting of 50 or more persons: Picnic groups consisting of 50 or more persons must obtain a picnic permit from the department and shall have it readily available at the picnic or party site for presentation to any police or department representative upon request. For large picnics and parties where the group size is 100 or more, and where advanced picnic site reservations are necessary for planning purposes, a permit application must be submitted no later than 3 working days prior to the requested date of use.
- (d) Deposits and fees:
 - (1) 0 through 50 people, free;
 - (2) 51 through 100 people, \$50;
 - (3) over 100 people, \$100.
- (e) Vehicles shall not be allowed to be driven on grassed areas for loading and unloading or any other purpose unless approval is obtained from the department and authorization is noted on the permit.
- (f) Except for in barbeque grills and braziers, the kindling, building, maintaining or using of any fire is prohibited unless specifically authorized on the permit.
- (g) Private barbeque grills must be lifted at least 12 inches above the grass and kept away from tree trunks, plants, and picnic tables.
- (h) Ashes and charcoal shall not be deposited near trees, plants or anywhere on the ground. Live charcoal shall be deposited only in permanently installed barbeques where provided, or in refuse containers after the charcoal is completely extinguished.
- (i) hookups for electricity and/or water are allowed provided authorization is noted on the permit.
- (j) Drinking of alcoholic beverages in the parks is permitted; however, persons making loud or offensive conduct, or distracting others will be asked to leave the park.
- (k) Small canopies or other tent-like shelters used for protection from the sun may be allowed provided they do not interfere with other park users, interfere with park maintenance work, or damage park vegetation. Large tents sustained by poles and pegs may be allowed provided a site plan is submitted and approved by the department, and then only if authorization is noted on the permit. Nails, screws or spikes shall not be driven into trees or structures.
- (l) Picnickers and partiers must keep their area clean and deposit all rubbish in the containers provided.
- (m) Food caterers shall not be allowed to cook food on territorial property.

History: Rule 17-87. eff 24 Dec 87. § 2.

TITLE 15 – CHAPTER 05 – GOLF

- Sections:
- 15.0501 General rules for use of golf course.
 - 15.0502 Hours of operation.
 - 15.0503 Golf carts.
 - 15.0504 Fees.
 - 15.0505 Prohibited activities and remedies.
-

15.0501 General rules for use of golf course.

These general rules shall apply to all persons using the Ili’ili golf course:

- (a) The maximum size of any party playing together is 5.

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- (b) The minimum size of any party playing is 2.
- (c) All divits must be replaced as they are made by the person who made them.
- (d) No golfer may hit his next shot until the following:
 - (1) on par-three holes, until the party ahead leaves the green;
 - (2) on par-four holes, until the party ahead gets to the green; and
 - (3) on par-five holes, until the party ahead has moved out of your tee-off shot range.

- (ii) Weekends: 9 holes 3.50
18 holes 7.00
- (iii) Holidays: 9 holes 3.50
18 holds 7.00
- (B) Monthly rates (per person) 30.00
- (C) Yearly rates (per person) 324.00

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0502 Hours of operation.

The golf course is open from 6:00 a.m. to 6:00 p.m., 7 days a week.

History: Rule 17-87. eff 24 Dec 87. § 2.

- (2) ASG Golf Carts:
 - (A) Daily Rates:
 - (i) Weekdays: 9 holes \$5.00
18 holes 10.00
 - (ii) Weekends: 9 holes 6.00
18 holes 12.00
 - (iii) Holidays: 9 holes 6.00
18 holes 12.00.

15.0503 Golf carts.

The following rules apply to use of golf carts leased from the department:

- (a) The maximum number of people that can ride on a cart at the same time is 2.
- (b) Carts are not permitted on the greens.
- (c) Carts may be used only by golfers and on the golf course.
- (d) Persons using a golf cart are liable for any damage they cause to the cart or to any department facilities. If the damage is not paid for within the time allowed by department personnel, the person may be suspended or barred from the course and subject to civil suit.

- (b) Monthly and yearly passes are not valid on weekends and holidays.
- (c) Persons age 60 and over are designated senior citizens for purposes of this section. Subsections (a) and (b) of this rule apply to senior citizens, except they shall pay one-half of the green fees stated in subsection (a)(l) of this section.

History: Rule 17-87. eff 24 Dec 87. § 2.

15.0504 Fees.

- (a) The following fee schedule applies to use of the golf course:
 - (1) Green Fees:
 - (A) Daily Rates:
 - (i) Weekdays: 9 holes \$3.00
18 holes 5.00

History: Rule 17-87. eff 24 Dec 87, § 2.

15.0505 Prohibited activities and remedies.

In addition to the prohibited activities set forth in the preceding sections of this chapter, the following activities are prohibited:

- (a) No person is authorized to allow private animals on the course. If animals are found on the course, department employees have the authority to dispose of the animal in any lawful manner they deem appropriate.
- (b) Except for department employees, no person shall be on the course except during the periods of operation stated in 15.0504 above. Persons found on the course during unauthorized times may be suspended or barred from further use of the course and referred to the police department

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for criminal prosecution as deemed appropriate by department personnel.

- (c) No person is allowed to play golf or use a department golf cart without having paid the required fees.
- (d) Private vehicles are not allowed on the golf course except in the case, of a medical emergency, and then only to pick up and transport the sick or injured person from the course.
- (e) No children under 12 years of age are allowed on the golf course at any time unless they are registered with the junior golf program.

History: Rule 17-87, eff 24 Dec 87, § 2.

TITLE 15 – CHAPTER 06 – TEMPORARY FOOD CONCESSIONS

Sections:

- 15.0601 Applicability and scope.
- 15.0602 Objectives.
- 15.0603 Permit procedures.
- 15.0604 Duration of concession stand.

15.0601 Applicability and scope.

These rules and regulations shall apply to temporary food concessions erected and operated in public parks under the control, management and operation of the department.

History: Rule 17-87, eff 24 Dec 87, § 2.

15.0602 Objectives.

These rules and regulations are promulgated for the following purposes:

- (a) to ensure that only bona fide nonprofit organizations are granted permits to operate temporary food concessions within territorial parks;
- (b) to ensure that the food sold from these concessions is fit for human consumption: (e) to ensure applicants for food concessions are treated fairly by the department.

History: Rule 17-87, eff 24 Dec 81, § 2.

15.0603 Permit procedures.

Nonprofit organizations desiring to sponsor and conduct food concessions on park property during authorized periods shall:

- (a) submit an application for temporary concession to the department after the applicant has received date and park assignment approval, but no earlier than 7 days prior to the date of the event;
- (b) attach to the application all appropriate public health clearances;
- (c) attach to the application a refundable deposit in the amount of \$100 to ensure proper and immediate cleanup, and restoration of damages.

History: Rule 17-87, eff 24 Dec 87, § 2.

15.0604 Duration of concession stands.

The duration of all concession stands held in territorial parks shall be limited to 5 calendar days.

History: Rule 17-87, eff 24 Dec 87, § 2.

END OF TITLE 15 – PARKS AND RECREATION

**TITLE 19 – COMMERCIAL VEHICLE
TRANSPORTATION**

Chapters:

01 Transportation of Persons and Freight

TITLE 19 – CHAPTER 01 – TRANSPORTATION
OF PERSONS & FREIGHT

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- 19.0102 Scope of rules and commercial vehicle regulation.
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*XI. ADOPTION OF FEDERAL
REGULATIONS*

- 19.0190 Adoption and applicability of federal
regulations
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I. GENERAL PROVISIONS

19.0101 Authority.

The rules set out in this chapter are promulgated pursuant to authority granted the commerce commission by 19.0103, 19.0115 and 19.0206 A.S.C.A.

History: Comm. Commn. Regs. eff 1 Jan 73. Rep. 1.01.

19.0102 Scope of rules and commercial vehicle regulation.

The commerce commission interprets the interest of the Legislature in enacting chapters 19.01 and 19.02 ASCA to be the protection of the health, safety and general welfare of all those people of American Samoa or visitors to American Samoa who use commercial vehicles, either for personal transportation or for transportation of freight. The protection envisions:

- (1) the adoption of rules to deal with fair and uniform rates, fares and charges for transportation of persons and freight;
- (2) the issuance, or denial, of commercial drivers permits; the limitation, modification, suspension or revocation of permits so issued;
- (3) the providing of a uniform system and classification of accounts to be used by commercial carriers;
- (4) the adoption of rules regarding qualifications for permit issuance and safety rules for commercial vehicles and the operation thereof and periodic inspections;
- (5) the issuance of certificates of convenience and necessity;
- (6) the investigation of the financial ability of applicants for certificates of convenience and necessity;
- (7) the adoption of rules of procedure to guide the chief of police or his designee and the commerce commission while enforcing the commercial vehicle law, and the rules set out in this chapter and when issuing orders pursuant there – to or for the taking of appeals therefrom; and
- (8) designating the amount and type of insurance for commercial carriers and their freight and passengers.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, subsection (1) added, “the adoption of.” Subsection (2), changed “refusal to issue” to “denial.” Subsection (8), added “designating.”

19.0103 Administration by police.

The commerce commission hereby appoints the chief of police the authority to administer all examinations prepared or approved by the commission, sign the commercial driver’s permit when issued, or deny it with a written statement giving the reason or reasons for such denial, and inspect and examine commercial vehicles as to operating or safety requirements. This is to say that the chief of police and his officers shall administer the commerce commission law and rules on a day-to-day basis.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, added “operating or.”

19.0104 Commission and police responsibilities-Appeal of actions.

The commerce commission views the relationship of the chief of police as the examiner of applicants for commercial drivers’ permits and the commerce commission as follows:

- (a) the commerce commission views its responsibility as one of promulgating rules for the implementation of 19.01 and 19.02 ASCA, and hearing of appeals from the day-to-day decisions or administration of the chief of police.
- (b) the chief of police, as the examiner of all applicants for commercial driver’s permits and the examiner of all commercial vehicles in regard to operating or safety requirements, shall either approve or deny commercial vehicle use. Thus, the chief of police shall administer the law and rules on a day-to-day basis.
- (c) any adverse decision of the chief of police may be appealed to the commerce commission by the affected person. The commission shall then hold a hearing independently. The commission may, of course, afford such weight as it feels is appropriate to the prior decision of the chief of police.

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- (d) upon any appeal to the court from an adverse decision of the commission, the commission shall prepare the record of such hearing and the attorney general shall defend the action taken by the commission.

History: Comm. Commn. Regs., eff 1 Jan 73, Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, removed numbering. Subsection (1), removed makeup of the Commission.

19.0105 Definitions.

When used in this chapter the words set out in this section shall have the following meaning:

- (a) “Bus” means any commercial vehicle having spaces for 6 or more adult passengers.
- (b) “Cargo vehicle” means any commercial vehicle used to haul goods or cargo for hire.
- (c) “Chief of police” means the chief of police, ASG, or his designee.
- (d) “Commercial carrier” means any person operating any commercial vehicle upon any highway in American Samoa.
- (e) “Commercial driver’s permit” means a permit issued by the commerce commission, signed by the chief of police, authorizing the licensee to drive a commercial vehicle and is in addition to a private driver’s license.
- (f) “Commercial vehicle” means any automobile, truck, motorbus, or other self-propelled vehicle, including any semitrailer or other device used in connection therewith, not operated upon fixed rails or tracks, and used for the transportation of freight or the transportation of passengers for compensation. Pickups used in the transportation of freight shall not be considered commercial vehicles, unless the pickup transports placardable amounts of hazardous materials, then it will be considered a commercial vehicle.
- (g) “Commission” means the commerce commission, ASG.
- (h) “Person” means any individual, firm, partnership, corporation, combination or other association, as appropriate.

- (i) “Taxi” means any commercial vehicle having spaces for not more than 5 adult passengers.

History: Comm. Commn. Regs., eff 1 Jan 73, Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, subsection (f) included pickups carrying placardable amounts of hazardous materials.

19.0106 Commission quorum-Deciding majority-Chairman.

Any 3 members at a commission meeting shall constitute a quorum. A majority of such quorum is sufficient to decide any matter before the commission. If the chairman is absent, one of the other members shall act as chairman.

History: Comm. Commn. Regs., eff 1 Jan 73, Reg. 1.01.

19.0107 Violation-Penalty.

- (a) All violations of this chapter shall be punished in accordance with 19.0136 ASCA: “19.0136 Misdemeanors. Any owner, officer, agent or employee of any commercial carrier, and every other person who does any of the following is guilty of a class B misdemeanor:
- (1) violates or fails to comply with, or who procures, aids or abets in the violation of, any provision of this title or Title 22 relating to commercial vehicles;
 - (2) fails to obey, observe or comply with any order, decision, rule, direction, demand or requirement or any part or provision thereof, of the commission;
 - (3) procures, aids or abets any corporation or person in his failure to obey, observe or comply with any such order, decision, rule, direction, demand or regulation or any part or provision thereof.”
- (b) In addition to the penalties set forth in subsection (a) of this section, failure to obey any of the rules of the commission may result in the suspension, modification, or revocation of any license or certificate issued by the commission or subject to the authority of the commission.

History: Comm. Commn. Regs. eff 1 Jan 73, Rep. 1.01.

II. COMMERCIAL DRIVERS’ PERMITS

19.0110 Commercial permit mid private license required.

A person shall not operate a commercial vehicle upon a highway without having first secured, and having in his immediate possession, a valid commercial driver's permit. In addition, such driver must also have in his immediate possession a valid private driver's license.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; amd 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed "no person shall," to "a person shall not."

19.0111 Application-Consideration.

All applications for a commercial driver's permit shall be filed with the chief of police and he shall determine the fitness of each applicant in accordance with the qualifications, requirements and procedures set forth in this article, and shall approve or disapprove each applicant in accordance with this article.

History: Comm. Commn. Regs. eff 1 Jan 73. Rep. 1.01.

19.0112 Qualifications.

Each applicant for a commercial driver's license must be qualified as follows:

- (a) The applicant must be qualified to hold, and actually have, a private driver's license issued by the police department, ASG.
- (b) Each applicant must be at least 21 years old and must have had 2 years' driving experience pursuant to a valid private driver's license.
- (c) Each applicant shall be required to pass a written test prepared by the police department and be tested as to driving ability by a member of the police department designated by the chief of police.
- (d) The applicant must be a permanent resident of American Samoa or have lived in American Samoa for 1 year next preceding application for a commercial driver's permit.
- (e) The applicant shall not have been convicted of:
 - (1) a homicide involving a motor vehicle or of causing death or bodily injury while driving while intoxicated (22.0708 ASCA) at any

time within 3 years next preceding application.

- (2) three or more convictions of speeding, 2 or more convictions of reckless driving (22.0702 ASCA) or driving while intoxicated (22.0707 ASCA) or a combination thereof at any time within 5 years next preceding application.
- (3) any other felony or 3 or more traffic misdemeanors at any time within 3 years next preceding application; provided, however, that in cases falling under this paragraph the commissioner of public safety and/or the chief of police may make exceptions on reasonable grounds.

For purpose of subsection (e) a plea of guilty or a forfeiture of collateral shall be deemed a conviction.

- (f) In the event the applicant has resided other than in American Samoa within the 5- year period prior to his application, such applicant shall supply the commission with a certified copy of his criminal and driving record of the place or places in which he resided.
- (g) A commercial driver's permit shall not be issued or renewed unless the applicant has taken and satisfactorily completed a Commission approved driving course within the immediately preceding 4 years. In addition, the commission may require a permittee who has been convicted of any offense listed in subsection (e) of this section or whose commercial driver's permit has been suspended to take and satisfactorily complete this course, or an applicant whose commercial driver's permit has been revoked to take and satisfactorily complete this course, before he is again issued a permit.
- (h) Should the chief of police or the commission have reason to believe that an applicant for, or a holder of, a commercial driver's permit has medical disabilities which may render the operation of a commercial vehicle by such person unsafe, the chief of police, commissioner of public safety or commission may require such person to undergo medical examinations to

ascertain the extent, if any, of such disability. Upon receipt of the results of such medical examinations, the commission may condition the operation of the commercial vehicle upon such conditions as it believes necessary.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, subsection (g), changed language to a "Commission approved driving course."

19.0113 Exceptions to qualifications.

The chief of police, upon reasonable grounds, may make exceptions to the requirements of 19.0112 (d), (e), and (g) of this chapter.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, added "of this chapter."

19.0114 Expiration-Renewal.

Each commercial driver's permit issued shall automatically end on 31 Dec of the year issued. Renewal application shall be made by the applicant on or before such date. The chief of police shall then cause a search of such applicant's driving and criminal record to be made and may require other information.

History: Comm. Commn. Regs. eff 1 Jan 73. Rep. 1.01.

19.0115 Denial.

Failure of the applicant to successfully meet all the requirements of ASCA 19.0203 shall be grounds for denial of a commercial driver's permit. Upon such denial, the chief of police shall advise the applicant, in writing, of the specific reasons for such denial.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, added "ASCA."

19.0116 Appeal of denial.

Denial by the chief of police or the commissioner of public safety of an application for a commercial driver's permit may be appealed to the commission within 10 days of notice of such denial. The aggrieved applicant shall state the reasons for such appeal on a form provided by the commission and, upon receipt of such appeal, the commission shall provide the applicant with a hearing within a reasonable time. Such hearing shall provide the appealing party with an opportunity to show cause why a commercial

permit should be issued to him. The commission may, upon reasonable grounds and subject to reasonable conditions, then award a commercial driver's permit or affirm the decision of the chief of police. The decision of the commission shall be in writing, made within a reasonable length of time from date of hearing, and sent by mail to applicant's address.

History: Comm. Commn. Regs. eff 1 Jan 73. Rep. 1.01.

19.0117 Appeal hearing procedure.

Procedure for the hearing provided for in 19.0116 of this chapter shall be substantially as follows:

- (a) The chairman or acting chairman shall preside and shall state for the benefit of the members and the appealing party and his representative, attorney or witnesses:
 - (1) the name of the party;
 - (2) that this is an appeal from denial to issue a commercial driver's permit;
 - (3) the reasons for such denial.
- (b) The appellant shall then present his case. He should be ready to show affirmatively that he is eligible for a commercial driver's permit. He may also show mitigating factors for any citations received (although the commission shall not retry each citation and a conviction of a misdemeanor or crime shall be conclusive), and any other reasons to show that a license should be issued, including character references.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, added "of this chapter."

III. CERTIFICATE OF CONVENIENCE AND NECESSITY

19.0120 Required to operate commercial vehicle.

A person shall not operate a commercial vehicle upon any highway in American Samoa without first having obtained from the commission a certificate of convenience and necessity.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed "no person shall," to "a person shall not."

19.0121 Procedure.

Procedures to determine if a service proposed to be rendered will promote the public convenience and necessity shall be as follows:

- (a) Applications, posting and service of notice shall be in accordance with 19.0116, 19.0117, and 19.0125 ASCA, as now in force or as hereinafter amended.
- (b) Objections shall be filed within 10 days after posting pursuant to 19.0118 ASCA, as now in force or as hereinafter amended.
- (c) All hearings shall be conducted in accordance with 4.1025 through 4.1034, and 19.0125, 19.0126, and 19.0127 ASCA, as now in force or as hereinafter amended.
- (d) All appeals and judicial review shall be processed pursuant to 19.0129, 19.0130, and 19.0131 ASCA, as now in force or as hereinafter amended.

History: Comm. Commn. Regs. eff 1 Jan 73. Reg. 1.01.

19.0122 Franchises.

The commission may award a franchise to a holder of a certificate of convenience and necessity if such franchise would, in the judgment of the Commission, have a material effect in the providing of commercial transportation with American Samoa. Such franchise shall be issued in conformance with the procedure as set out in 19.0121 of this chapter.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, added “of this chapter.”

19.0123 Termination-Renewal.

Each certificate of convenience and necessity shall automatically terminate on 31 December of the year issued. Renewal applications shall be made by the applicant upon forms provided by the commission and the applicant shall supply all required information.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, completed the word, “December.”

IV. REVOCATION, SUSPENSION, OR MODIFICATION PROCEEDINGS

19.0125 Notice of intended action-Summary suspension.

The revocation, suspension, or modification of a commercial driver’s permit or certificate of convenience and necessity shall proceed in accordance with 4.1036 ASCA, which provides for the giving of reasonable notice of facts or conduct which warrant the intended action and an opportunity to show compliance with all requirements for the retention of the license. However, should the commission find that the public health, safety, or welfare require emergency action and incorporates such finding in its order, the commission may order a summary suspension of the commercial driver’s permit for a period not to exceed 120 days, pending revocation proceedings or other action.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed “be effected” to “proceed.”

19.0126 Hearings.

All hearings to revoke, suspend, or modify commercial driver’s permits or certificates of convenience and necessity shall be conducted in accordance with 4.1025 through 4.1029 ASCA, which provide as follows:

- (a) In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice.
- (b) The notice shall include a statement of the time, place and nature of the hearing and a short and plain statement of the matters asserted.
- (c) All parties shall be afforded the opportunity to respond and present evidence and argument on all issues involved, and to conduct such cross-examination as is necessary for a full and true disclosure of the facts.
- (d) Strict rules of evidence need not be followed, but the receipt of evidence shall be guided by the rules of evidence applicable in the trial division of the High Court of American Samoa.
- (e) Agencies shall give effect to the rules of privilege recognized by law.
- (f) Official notice may be taken of judicially cognizable facts.

History: Comm. Commn. Regs. eff 1 Jan 73, Rep. 1.01.

19.0127 Decision or order-Findings of fact.

The decision or order of the commission in cases to revoke, suspend, or modify a commercial driver's permit or certificate of convenience and necessity shall be in accordance with 4.1030 and 4.1031 A.S.C.A., as follows:

- (a) A final decision or order adverse to a party in a contested case shall be in writing and stated in the record. A final decision shall include findings of fact and conclusions of law. If findings of fact are set forth in a statutory language, they shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.
- (b) Findings of fact shall be based exclusively on the evidence and on matters officially noticed. An agency's experience, technical competence, and specialized knowledge may be used in the evaluation and interpretation of the evidence.
- (c) All parties shall be notified either personally or by mail of any decision or order and shall, upon request, be furnished with a copy of the same.

History: Comm. Commn. Regs., eff 1 Jan 73, Rep. 1.01.

19.0128 Record of hearing.

The record of all hearings for revocation, suspension or modification of commercial driver's permits or certificates of convenience and necessity shall be in accordance with 4.1032 A.S.C.A., as follows:

In a contested case, the record shall include:

- (1) all pleadings, motions, proposed findings, exceptions, objections, briefs, and memoranda filed by the parties;
- (2) a summary of the evidence received or considered and of matters officially noticed at any stage of the agency proceedings;
- (3) any intermediate rulings and any decision, opinion, or report by the officer presiding at the hearings;
- (4) the final decision or order of the agency;
- (5) any other relevant material ordered into the record by the agency or its hearing officer.

History: Comm. Commn. Regs. eff 1 Jan 73, Rep. 1.01.

19.0129 Judicial review.

Judicial review of actions by the commission to revoke, suspend or modify commercial driver's permits or certificates of convenience and necessity, shall be in conformance with relevant subsections of 4.1040 through 4.1044 A.S.C.A., which provide as follows:

- (a) A person who has exhausted all administrative remedies available within an agency and who is aggrieved by a final decision in a contested case shall be entitled to judicial review under 4.1040 through 4.1044 A.S.C.A.
- (b) Section 4.1040 does not limit the utilization of, or the scope of judicial review available under other means of review, redress, relief or trial de novo provided by law, and judicial review may not be sought under 4.1040 through 4.1044 A.S.C.A., of any proceedings for which, or by any person for whom, the law specifically provides other adequate means of judicial review.
- (c) A preliminary, procedural, or intermediate agency action or ruling shall be immediately reviewable only if review of the final agency decision would not provide an adequate remedy.
- (d) Proceedings for review may be instituted by filing a petition in the appellate division of the High Court of American Samoa within 30 days after the issuance of the decision to be reviewed, or if rehearing or reconsideration is requested, within 30 days after the decision thereon. Copies of the decision shall be served upon the agency and all parties of record.
- (e) The filing of a petition under 4.1041 A.S.C.A., shall not stay enforcement of the agency's decision, The agency may grant, or the court may order a stay on appropriate terms.
- (f) Within 30 days after service of the petition, or within further time allowed by the court, the agency shall transmit to the court the original or a certified copy of the record of the proceeding under review.

- (g) The review shall be confined to the record. Upon request by any party, the court shall receive briefs and hear oral argument. On motion of any party, the court may, in its discretion receive any evidence necessary to supplement the record.
- (h) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. In reviewing the agency’s interpretation of the evidence, its factual inferences, and its conclusions of law, the court shall give appropriate weight to the agency’s experience, technical competence, and specialized knowledge.
- (i) The court may reverse or modify the decision of the agency, or may remand the case for further proceedings, if substantial rights of the petitioner have been prejudiced because the decision of the agency is:
 - (1) in violation of applicable constitutional or statutory provisions;
 - (2) in excess of the statutory authority of the agency;
 - (3) made upon unlawful procedure;
 - (4) affected by other error of law;
 - (5) clearly erroneous in view of the reliable, probative, and substantial evidence in the whole record;
 - (6) arbitrary, capricious, or characterized by abuse of discretion.

History: Comm. Commn. Regs. eff 1 Jan 73. Rep. 1.01.

19.0130 Other remedies.

Nothing in this article shall be construed to limit the commission to actions to revoke, suspend or modify commercial driver’s permits or certificates of convenience and necessity when other judicial remedies are available, nor shall proceeding under this article be exclusive of any criminal prosecution provided for in the laws of American Samoa.

History: Comm. Commn. Regs. eff 1 Jan 73. Rep. 1.01.

V. LICENSE PLATES

19.0135 Plates required.

A commercial vehicle shall not be operated upon any highway in American Samoa without having attached to the front and rear thereof a distinctive marking in the form of a license plate.

*History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.
Amendments: 2012, moved the “not.”*

19.0136 Vehicle classes.

There shall be a distinctive and separate numbering system for each class of vehicles designated as “bus”, “taxi”, or “cargo vehicle”. Such plates may have other markings which may designate a registration number year, the legend, “Territory of American Samoa”, as well as any other legend.

History: Comm. Commn. Regs. eff 1 Jan 73. Rep. 1.01.

19.0137 Preparation and distribution duty.

The department of public safety is designated to prepare such license plates and attend to their distribution with approval of the commission.

*History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.
Amendments: 2012, changed “administrative services” to “public safety.”*

VI. FEES

19.0140 Application for Certificate of Convenience - Fee

- (a) In addition to the application and renewal requirements under ASAC 19.0123 and ASCA 19.0116, the application fee to apply for and renew a Certificate of Convenience shall be twenty dollars and shall be paid at the time the application or renewal application is submitted. Failure to submit the application fee shall result in a rejection of the application or renewal.
- (b) The revenue generated by the application fee shall be deposited into a separate account and shall be used for the administration of this chapter.

*History: Comm. Commn. Regs., Rule 01-2012, eff 1 Oct 12.
Amendments: 2012, added “of this chapter.”*

19.0141 Collection responsibility.

The department of public safety is designated as the representative of the commission to collect fees for the issuance of any license plates or driver's licenses issued pursuant to this chapter and to collect such other expenses as provided for under 19.0128 (a) and (b) ASCA and as may be reasonably levied by the commission.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed number from 19.0140. Changed "administrative services" to "public safety."

VII. OPERATION, INSPECTION, AND EQUIPMENT

19.0150 Inspection-Procedure-Safety sticker - equipment required.

The following procedure will be followed in inspecting all commercial vehicles:

(a) Denial of Safety Sticker. Failure to pass any of the following must result in the denial of a safety certificate:

- (1) In-station inspection on jacks:
 - (A) Remove 1 rear wheel and 1 front wheel to check brake lining wear. Linings must be at least 3/32 of an inch. In the case of brakes which are in compliance but still marginal, a notation should be made on the inspection form.
 - (B) Test brake pedal to check if proper clearance between the pedal and floor is maintained after 1 stroke.
 - (C) Front end: inspect steering mechanism to ensure that all connections are tight. There should be no play in the front end. The steering wheel must activate the front wheels with no more than 1/4 turn.
 - (D) Hand brake must lock at least 2 wheels.
 - (E) The vehicle must have installed a seatbelt assembly as required in ASCA 22.0333.

(2) Offjacks:

(b) Temporary Sticker. The following violations will result in only a 30-day temporary sticker being issued:

- (1) Windshield must be of clear safety glass.
 - (2) Tires must have more than twenty-five percent of original tread.
 - (3) Windshield wiper must be self-operating and operable.
 - (4) Speedometer must be operable.
 - (5) Light lenses must be of the color required by the ASCA.
 - (6) Muffler should not be excessively noisy.
 - (7) Clearance lights must be shown, and of the proper color, on all vehicles over 18 feet.
 - (8) Horn must be operable. Vehicles with violations under this subsection will be issued stickers good only for 30 days. At the end of such time the vehicle's registration will be revoked automatically, ipso facto, if the violation has not been corrected, or if the owner cannot show proof of an order placed with a supplier which has not yet been delivered.
- (c) Taxi General Inspection. With taxis, a general inspection should be made to insure:
- (1) the floors and sides are solid;
 - (2) all doors operate and lock securely;
 - (3) all windows have glass which rolls up and down easily;
 - (4) the car is in generally good condition, is clean, and is presentable for use.
- (d) Bus General Inspection. With buses, a general inspection should be made to see that the body is securely connected to the chassis.
- (e) Road Test.
- (1) Check that the vehicle has no excessive play in the front end.
 - (2) Shock absorbers should be of reasonable quality.

- (3) Brakes should be applied in a quick stop without pull or jerk to either side.
- (4) There should be no excessive noise or rattles.
- (f) Bus Equipment.
 - (1) On and after 1 Sep 80, each previously registered and licensed bus shall be equipped with a safety glass windshield. On and after 1 Jul 80, each previously unregistered and unlicensed bus shall be equipped with a safety glass windshield.
 - (2) On and after 1 Sep 80, each previously registered and licensed bus shall be equipped with a rear lowboy bumper. On and after 1 Jul 80, each previously unregistered and unlicensed bus shall be equipped with a rear lowboy bumper.
- (g) Inspector-specified Points. The safety inspector appointed by the commissioner of public safety may specify other inspection points and may deny a safety sticker for such points. In the event the inspector does so, he shall state the reasons therefor on the inspection denial sheet.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Jan 13.

Amendments: 2012, changed number from 19.0152. Added subsection (E).

19.0151 Restrictions on small buses.

- (a) Buses weighing less than three quarters (3/4) of a ton shall not operate commercially, except along the main road spanning from the canneries in Atu'u to the LBJ Hospital in Fagatogo. Such buses shall not deviate from the main road, except to go to LBJ Hospital.
- (b) For purposes of this section the bus weight shall be calculated based on the original manufacturer's weight and towing capacity of the vehicle before modification.
- (c) Persons failing to comply with the provisions of this section shall be guilty of a class B misdemeanor and upon conviction shall be sentenced accordingly.

History: Comm. Commn. Regs., Rule 01-2012, eff 1 Jan 13.

19.0152 Inspections - When

All commercial vehicles shall be inspected at the time of original registration and licensing, each renewal registration and licensing, and during the sixth month between each registration and licensing. In addition, the commission may cause any commercial vehicle to be inspected at any time in the interest of public safety.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed number from 19.0153.

19.0153 Reinspection after accident or damage

Each commercial vehicle shall be reinspected by the commission subsequent to being involved in a traffic accident or being damaged in any way.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed number from 19.0155.

19.0154 Tint on commercial vehicles prohibited

- (a) A person shall not operate a commercial passenger vehicle on the road or highway if any of the windows or windshield of the commercial passenger vehicle contain any sunscreening material that reduces light transmittance to any degree, including but not limited to, tint, window applications, reflective film, non-reflective film, or glazing.
- (b) The application by the manufacturer at the time of manufacture of the commercial vehicle of a minor tinting or sunscreening on the visor portion of the windshield or the rear windows shall not be considered a prohibited sunscreening material.
- (c) Failure to comply with this section shall be grounds for revocation or suspension of a commercial driver's permit or certificate of convenience.

History: Comm. Commn. Regs., Rule 01-2012, eff 1 Oct 12.

VIII. RULES AND POSTING BUS AND TAXI RATES

19.0160 Eating and Drinking Prohibited

- (a) Prohibition. Commercial carriers shall not permit anyone to consume food or beverages while traveling in buses and taxis.
- (b) Sign Required. Each commercial carrier operating a bus or taxi shall conspicuously post a sign in each vehicle notifying passengers that eating and drinking is prohibited, which shall contain the following minimum language: “By Order of the Commerce Commission, no eating or drinking is allowed inside this vehicle.”
- (c) Containers. Each commercial carrier operating a bus shall provide a litter disposal container for public use in each vehicle.

History: Comm. Commn. Regs., eff 3 Sept 95; and 2012, Rule 01-2012, eff 1 Oct 12.
Amendments: 2012, changed number from 19.0156.

19.0161 Photo identification of driver on display

Each operator of a commercial passenger vehicle must display his or her valid, government issued photo identification in a common area that is readily viewable to the passengers. A photocopy of the identification shall be sufficient to comply with this section.

History: Comm. Commn. Regs., Rule 01-2012, eff 1 Oct 12.

19.0162 Smoking Prohibited

- (a) Pursuant to ASCA 13.1303, it is prohibited to smoke in a passenger commercial vehicle, whether taxi or bus.
- (b) The operator of the commercial vehicle shall have the duty to make every reasonable effort to prohibit smoking in the vehicle, including by posting conspicuous signs prohibiting smoking.
- (c) Failure to comply with this section, or with ASCA 13.1301 et seq. shall be grounds for revocation or suspension of a commercial driver’s permit or certificate of convenience.

History: Comm. Commn. Regs., Rule 01-2012, eff 1 Oct 12.

19.0163 Rates – Exceeding provisions prohibited

An operator of a commercial passenger vehicle, or other person collecting fares, shall not charge or collect a fee or rate more than that set forth in this chapter.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.
Amendments: 2012, changed number from 19.0145.

19.0164 Rates-Posting.

A copy of the rates set forth in this chapter shall be posted in a conspicuous place in every commercial passenger vehicle such that they may be seen by the passengers. The operator of the commercial passenger vehicle must provide the rate schedule upon request of a passenger.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.
Amendments: 2012, changed number from 19.0146.

IX. TAXI RATES

19.0170 Taxi Rates

- (a) The following are the maximum permissible rates per trip regardless of the number of passengers carried:

Village/Area One Way Fare West From Market Place (Fagatogo)	
Fagatogo	\$2.00
Sadie’s by the Sea	2.00
Utulei	2.00
Old Tramway	2.00
Faga’alu	3.50
Fatumafuti	3.75
Matu’u	4.25
Vasa’aiga	4.50
Faganeanea	5.00
Nuu’uli Main Village	5.75
Nuu’uli Coconut Point	6.50
Laufou Shopping Center	7.00
Nuu’uli Manulele School	8.00
Tafuna Government Housing	8.00
Airport Terminal	9.50
Kokoland Tafuna	12.00
Tradewinds Hotel	9.00
Fatu-O-Aiga	10.00
Malaeimi (Baptist Church)	8.25
Malaeimi (College Campus)	8.75
Falenui	9.50
Mapusagafou	11.25

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Aoloau	14.00
Pava'iai	10.25
Iliili (Asuemu)	10.50
Iliili Village	12.50
Iliili Golf Course	11.50
Futiga	11.25
Maliu Mai Beach Resort	11.00
Turtle & Shark Lodge, Vaitogi	13.25
Puapua Malaeloa T/OFF	11.75
Malaeloa Village	12.50
Midkiff Intersection	12.50
Leone	14.00
Taputimu G/Farm	13.00
Vailoatai	14.00
Amaluia	14.25
Afao	14.75
Nua & Seetaga	15.50
Amanave	17.75
Poloa	22.75
Fagali'i	27.25
Maloata	30.50
Fagamalo	35.50
Village/Area One Way Fare East From Market Place (Fagatogo)	
Asco Motors Toyota	\$2.00
Evalani's	2.00
Pago Plaza	2.00
Pago FIFA Soccer Field	3.00
Vaipito	4.00
Fagasa	8.75
Satala – Southwest Marine Boat Haul Out	3.00
Atu'u – Canneries	3.50
Leoaloa incl Lepua	4.25
Aua	5.00
Onesosopo Park	5.75
Laulii Fou/Laulii Tuai	6.75
Aumi	7.50
Tisa's Barefoot Bar	8.25
Two Dollar Beach – Avaio	10.00
Auto	9.00
Amaua	9.00
Fagaitua	10.25
Maséfau	15.50
Masausi	15.50
Pagai	11.00
Alofau	11.75
Amouli	14.00
Aoa	18.50
Auasi	19.00
Utumea	19.50
Alao	19.75
Tula	20.00
Vatia	25.50

Afono	25.50
Onoenoa	25.50
Village/Area One Way Fare West of Pago Pago International Airport	
Tradewinds Hotel	3.00
Fatu-O-Aiga	2.50
Seventh Day Adventist Ili'ili	2.50
Kokoland Tafuna	5.50
Malaeimi Baptist Church	2.75
Community College	3.00
Mesepa	4.50
Falenu	4.25
Mapusagafou	5.75
Aoloau	10.00
Pavai'ia'i	5.00
Iliili (Asuemu)	5.25
Iliili Village	5.50
Iliili Golf Course	5.50
Futiga	5.75
Maliu Mai Beach Resort	5.00
Turtle & Shark Lodge, Vaitogi	8.00
Puapua Malaeloa T/OFF	6.50
Midkiff – Leone	7.50
Taputimu	7.50
Vailoatai	8.25
Amaluia	8.75
Asili	8.75
Afao	9.50
Nua & Seetaga	10.25
Amanave	12.50
Poloa	15.50
Fagali'i	20.00
Fagamalo	24.50
Village/Area One Way Fare East of Pago Pago International Airport	
Tafuna Government Housing	\$3.00
Laufou Shopping Center	3.00
Nu'uuli Main Village	4.25
Nu'uu'i Village Coconut Point	5.00
Avau	5.00
Faganeanea	5.00
Matu'u	5.75
Fatumafuti	6.00
Faga'alu	6.50
Utulei	8.00
Sadie's by the Sea	8.00
Fagatogo	9.50
(b) Charter: \$15.00 per hour; waiting: \$3.75 for 15 minutes; minimum charge: \$1.	
(c) Luggage	

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- (1) Each passenger is allowed two pieces of luggage free at no charge, brief cases and had carry items are free of charge.
- (2) \$1 for each piece of excess luggage above the allowance set out above.
- (d) Passengers should make sure change is available before commencing trip.
- (e) Any overcharges or irregularities should be immediately reported with all details to the police department at 633-1111, or Commerce Commission at 633-5155 a complaint may be filed with the Commission or Consumer Protection at A.G.'s office.
- (3) The physical address of the business; and
- (4) The phone number of the business.
- (d) The markings may include the company logo, but shall not include advertising for other companies or products.
- (e) Each taxi shall bear a roof sign which shall distinguish the taxi as a commercial vehicle and shall indicate whether the taxi is available for fare.
- (f) Failure to adhere to this section shall be grounds for revocation or suspension of a commercial driver's permit or a certificate of convenience.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; amd 2008; amd 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2008, established new taxi rates.2012, changed number from 19.0147. Title modified.

History: Comm. Commn. Regs., Rule 01-2012, eff 1 Jan 13.

19.0171 Company Markings and roof sign

- (a) Each taxi shall contain identifying markings identifying the vehicle as a taxi. The markings shall meet the minimum physical standards of this section:
 - (1) The markings shall appear on both sides of the taxi;
 - (2) The letters shall contrast sharply in color with the background on which they are placed;
 - (3) The information shall be readily legible during daylight hours from a distance of 50 feet while the taxi is stationary; and
 - (4) The markings must be maintained in a manner that retains the legibility.
- (b) The markings maybe be painted directly on the taxi, or may consist of a removable device, such as a decal or sticker, so long as the requirements of section (a) are maintained.
- (c) The markings shall contain at a minimum the following information:
 - (1) The legal or trade name of the taxi, as identified on the certificate of convenience;
 - (2) The vehicle identification number;

X. BUS RATES

19.0180 Bus Rates

- (a) The following one-way rates shall be charged by commercial buses as maximum rates:

Route Fare

- (1) Congestion Area.

From the Marist Fathers' Rectory in Atu'u to the end of Faga'alu village \$ 1.00

- (2) Western District. From Fagatogo (market place) to:

(A) Airport intersection 1.25

(B) Airport, areas on west side of airport intersection up to Leone-Auma including Ili'ili, Vaitogi, Mapusagafou, Taputimu, Vailoatai, and Malaeloa 1.50

(C) Areas on west side of Leone-Auma to Amanave including Aoloau and Aasu 1.75

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(D) Areas beyond Amanave 2.00
including Poloa, Fagali'i,
and Fagamalo

(3) Eastern District. From Fagatogo (market
place) to:

(A) Lauli'ituai 1.25

(B) Areas on east side of 1.50
Lauli'ituai to Amouli

(C) Fagasa 1.50

(D) Areas on east side of 1.75
Amouli to Tula

(E) Onenoa, Aoa, Masefau, 2.00
Masausi, and Sa'ilele

(F) Afono 2.00

(G) Vatia 2.25

(b) Charter Fares: The rate for charter buses is
computed as follows: Bus capacity x subsection
(a) rate for any set destination. Example: From
marketplace to airport using 20-seat bus = (20) x
\$1.50 = \$30 one-way, round trip \$60. This
method offsets any charge for waiting hours and
allows the bus to wait as long as 4 hours at no
extra cost.

(c) The following applies to all bus owners and
operators:

(1) That there is a minimum fare of \$0.50 for
intra-village and inter-village travel in areas
not distinctly covered in subsection (a) of
this section;

(2) That a fare of \$0.50 be charged for any ride
between any two adjacent points stated in
subsection (a) of this section. If riding
between more than 2 set points, the fare
must be consistently and reasonably
adjusted to avoid any unreasonable
overcharge;

(3) That no restriction is posed against
undercharging of passengers by any
operator. However, it advises strongly

against overcharging and asks that
operators observe the maximum rates
outlined in this section;

(4) That every bus owner holding valid
business license for commercial
transportation in American Samoa must
submit a quarterly financial statement after
each quarter to the Commission chairman
for filing, indicating business income and
expenditures.

*History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02;
amd 2008; amd 2012, Rule 01-2012, eff 1 Oct 12.*

*Amendments: 2008, established new bus rates; 2012,
changed number from 19.0148. Title modified.*

19.0181 College student bus rates

The provisions of 19.0180 ASAC to the contrary
notwithstanding, the maximum one- way rate that
may be charged by commercial buses for full-time
students enrolled at the American Samoa Community
College is \$0.50 subject to the following conditions:

(1) The student must present to the bus operator on
each ride a valid full-time student identification
card issued by the college.

(2) The student must be traveling either from home
to the college or from the college to home.

(3) The regular maximum bus rates apply on
weekends and college holidays.

*History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02;
amd 2008; amd 2012, Rule 01-2012, eff 1 Oct 12.*

*Amendments: 2008, established new bus rates; 2012,
changed number from 19.0149. Title modified.*

**19.0182 Side loading of buses and emergency
exits**

(a) All buses shall have an entrance exit on the right
side of such vehicle to be used for passenger
entrance and exit.

(b) All buses shall have a rear door to be used as an
emergency exit only. Emergency exit doors shall
be at a minimum two feet wide and four feet tall,
and easy to open in an emergency. Emergency
exits shall be certified for safety and adherence
to this chapter by the chief of police.

*History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02;
amd 2012, Rule 01-2012, eff 1 Jan 13.*

Amendments: 2012, changed number from 19.0150. Subsection (b) added.

19.0183 Loading and unloading stations

As loading stations are established, all commercial vehicles shall pick up or discharge passengers only in such specified zones or other areas. At all times commercial vehicles shall be completely off the road when picking up or discharging passengers.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed number from 19.0151.

19.0184 Passenger Capacity

- (a) The safety inspector of the Commission shall determine each bus' maximum occupancy based on the number of seats available in the bus, the type of vehicle, the length of the passenger-carrying compartment, the length such passenger-carrying compartment protrudes behind the rear wheels, the manner such compartment is attached to the chassis, the strength of shock absorbers and springs, and such other consideration deemed relevant by the inspector. This maximum occupancy number shall be identified on the certificate of convenience and necessity and visibly posted in the bus.
- (b) No bus shall be loaded beyond the maximum occupancy.
- (c) A person shall not stand, sit on the floor, or sit on the steps of an operating bus.
- (d) Any person violating a provision of this section shall be guilty of a Class B misdemeanor and sentenced accordingly. This rule may be applied to passengers, the driver, and/or the owner of the bus, and any others in violation.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed number from 19.0154. Added subsections (b)-(d).

XI. ADOPTION OF FEDERAL REGULATIONS

19.0190 Adoption and applicability of federal regulations

The following provisions of the federal motor carrier safety regulations in force and which may hereafter be adopted, where not clearly inapplicable to American Samoa, are adopted and made applicable in American Samoa for the purposes of administering and enforcing the motor carriers safety assistance program in the territory:

- (a) 49 Code of Federal Regulations Parts 390 through 399;
- (b) 49 Code of Federal Regulations Part 107, subparts F and G; and
- (c) 49 Code of Federal Regulations Parts 171 through 173, 177, 178, and 180.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 1995, eff 3 Sept 95; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 1995, added 49 CFR 180; 2012, changed number from 19.0161. Wording modified. Added adoption of federal regulations identified in subsection (b).

19.0191 Inspections for hazardous materials

- (a) In support of the safe transportation and movement of hazardous materials and wastes on the public highways of American Samoa, employees of the American Samoa Government assigned to administer the federal motor carrier safety assistance program in American Samoa are authorized to inspect the premises, equipment and freight, and the shipping papers and other documents related to the transportation of such freight for violations the regulations adopted in 19.0190.
- (b) Inspections under subsection (a) of this section shall be carried out in the presence of territorial law enforcement personnel.

History: Comm. Commn. Regs., eff 1 Jan 73. Reg. 1.02; and 2012, Rule 01-2012, eff 1 Oct 12.

Amendments: 2012, changed number from 19.0162.

END OF TITLE 19 – COMMERCIAL VEHICLE
TRANSPORTATION

TITLE 20 – HARBORS AND NAVIGATION

Chapters:

- 01 Marine Inspection, Certification, License
- 02 Boat Operations
- 03 Mooring and Unmooring
- 04 Dockage and Wharfage

TITLE 20 – CHAPTER 01 – MARINE INSPECTION, CERTIFICATION, LICENSE

Sections:

- 20.0101 Board of marine inspectors-Establishment.
- 20.0102 Board of marine inspectors-Authority.
- 20.0103 Legislative intent-Construction.
- 20.0104 Laid up vessels exempt-Inspection before operation.
- 20.0105 ASG and U.S. vessels exempt.
- 20.0106 Definitions.
- 20.0107 Foreign vessels-Statutory authority.
- 20.0108 Foreign vessels-Applicability of safety standards.
- 20.0109 Foreign vessels-Inspection.
- 20.0110 Foreign vessels-Licensed master and engineer required.
- 20.0111 Foreign vessels-Home compliance consideration.
- 20.0112 Annual inspection-Certificate.
- 20.6113 Certificates of registry and inspection.
- 20.0114 Change of master.
- 20.0115 Failure to report sale or transfer.
- 20.0116 Name change.
- 20.0117 Refusal, revocation, suspension, limitation, or modification of certificates.
- 20.0118 Master and engineer license required.
- 20.0119 Master qualifications.
- 20.0120 Engineer’s license qualifications.
- 20.0121 License renewal.
- 20.0122 License refusal, revocation, suspension, limitation, modification.
- 20.0123 Retention of vessels-Safety measure enforcement.
- 20.0124 Inspection power unrestricted.
- 20.0125 Operation despite noncompliance.
- 20.0126 Violation-Summary fines.
- 20.0127 Violation-Penalties upon Conviction.

For provisions see small vessels, including inspection and operator licensing, see 20.02 of this code.

20.0101 Board of marine inspectors-Establishment.

The board of marine inspectors has been established pursuant to 20.0203 A.S.C.A., which reads as follows:

“There is hereby created a Board of Marine Inspectors composed of five qualified persons appointed by the Governor of American Samoa, which shall have general superintendence over all vessels and seamen operating in inter-island coast-wise traffic in American Samoa and adjacent waters.”

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72. § 1.01.

20.0102 Board of Marine inspectors-Authority.

(a) In 20.0204 A.S.C.A., the board of marine inspectors is granted the following authority:

- (1) To issue registers and certificates of inspection (hull and machinery) for the operation of vessels;
- (2) To issue license for masters, pilots and engineers after appropriate written and oral examinations as determined necessary by the board;
- (3) To maintain records of board proceedings and preserve copies of documents issued under this chapter;
- (4) To make all necessary inspections of vessels in furtherance of the provisions of this chapter;
- (5) To promulgate all rules necessary to effectuate the purpose of this chapter;
- (6) To hold hearings, compel attendance of witnesses, to order the production of documents and other tangible evidence and to administer oaths;
- (7) To refuse to issue, revoke, suspend, limit, or modify any register, certificate of inspection, or license provided for in this title.

- (b) The rules contained in this title are promulgated pursuant to the authority contained in paragraph (a) (5).

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 1.02.

20.0103 Legislative intent-Construction.

It is the Legislature’s declared purpose in 20.0201 A.S.C.A., to establish standards for the protection and promotion of the health, safety, and general welfare of the people of the territory in dealing with vessels operating in interisland and coastwise shipping in American Samoa and adjacent waters. The board was created to effect that purpose and these rules promulgated pursuant to 20.0204 (5) A.S.C.A., and the rules set out in this chapter and elsewhere in this title should be construed so as to carry out the legislative purpose.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 1.03.

20.0104 Laid up vessels exempt-Inspection before operation.

Vessels while laid up and out of commission are exempt from any and all inspection by the board. Before a vessel is placed back in operation, an inspection by the board shall be made to ascertain that all rules required are complied with.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 1.04.

20.0105 ASG and U.S. vessels exempt.

Any vessel owned or operated by the ASG or the United States is exempt from inspection by the board unless it is requested to do so.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 1.05.

20.0106 Definitions.

As used in the rules set forth in this chapter and elsewhere in this title, the words in this section mean as follows:

- (a) “approved”, when applied to safe equipment approved, shall in all cases means United States Coast Guard approved or any foreign nation signatory to the International Convention for Safety of Life at Sea having inspection laws approximating those of the United States.
- (b) “board” means the board of marine inspectors or a person designated to act on behalf of the board of marine inspectors.

- (c) “certificate of inspection” means a certificate as required by 20.0212 A.S.C.A.

- (d) “certificate of registry” means a certificate issued pursuant to 20.0215 A.S.C.A.

- (e) “examiner” means a person designated by the board of marine inspectors to examine and inspect vessels in the enforcement of provision of Title 20 A.S.C.A., and the rules set out; this chapter and elsewhere in this title:

- (f) “person” means an individual, firm, partnership, joint venture, or corporation when the context so requires.

- (g) “port director” means the port director of American Samoa or his designated representative.

- (h) “vessel” means every description of watercraft (except longboats and paopaos) used or intended to be used as a means of transporting passengers or freight for profit.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 1.06.

20.0107 Foreign vessels-Statutory authority.

Section 20.0230 A.S.C.A., grants the board authority to inspect foreign vessels entering Pago Pago Harbor carrying goods or people to or from American Samoa to ascertain if the vessel’s safety precautions and equipment meet the standards established by Chapter 20.02 A.S.C.A., and the rules set out in this chapter and elsewhere in this title.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 2.01.

20.0108 Foreign vessels-Applicability of safety standards.

It is declared to be the policy of the board that the safety standards established in the law and the rules set out in this chapter and elsewhere in this title are minimum safety standards which should be met by all vessels operating in interisland and coastwise shipping in American Samoa and adjacent waters and these standards should be complied with by all such vessels regardless of the country of registry.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 2.02.

20.0109 Foreign vessels-Inspection.

All vessels entering Pago Pago Harbor operating in interisland or coastwise shipping carrying goods or people to or from American Samoa, shall be subject to periodic inspection by the board to determine if the vessel meets the safety standards as established by Chapter 20.02 ASCA and the rules set out in this chapter and elsewhere in this title.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 2.03.

20.0110 Foreign vessels-Licensed master and engineer required.

All foreign vessels must have a master and engineer licensed by the country of the vessel's registry. The license of the master and engineer must be produced upon demand of the board if the master or engineer fails to produce their license on demand, the vessel may be prohibited from carrying passengers or cargo to or from any port in American Samoa until the license is produced.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 2.04.

20.0111 Foreign vessels-Home compliance consideration.

If the board determines that a foreign vessel has been registered, licensed, and inspected by a marine board of comparable jurisdiction in the vessel's home port or country of registry the board will give consideration to the foreign board's standards to determine if the vessel meets the fundamental safety requirements of Article I of 20.02 of this code.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 2.05.

20.0112 Annual inspection-Certificate.

The board shall, once in every year and oftener, if it is determined necessary by them, carefully inspect every vessel licensed by the board. Such inspection shall determine that all requirements of law, such as seaworthiness, lifesaving equipment, firefighting equipment, pumps, hose, anchors, cables, electrical equipment, structure, and other things are faithfully observed. If in the opinion of the board any of the foregoing equipment is found unsatisfactory, shall order the correction of the fault and may suspend the certificate of inspection or revoke the license of the master. Upon satisfactorily passing the inspection, the board shall issue to the vessel inspected the certificate of inspection. Such certificate of inspection shall state

the number of liferings, water lights, rafts, boats, firefighting equipment, crew complement, anchors, cable, and other safety equipment, on the vessel, as the board requires.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.04.

20.0113 Certificates of registry and inspection.

- (a) It shall be the duty of the board to provide blank certificates of registry and inspection. Such register shall cover ownership of the vessel, residence and citizenship of owner and if there be more than 1 owner, the proportion of ownership to each owner his residence and citizenship, the name of the vessel its home port, name of present master his address and citizenship tonnage, kind of vessel, and appropriate ship measurement.
- (b) Certificates of registry and inspection shall be issued for periods of 1 year but nothing herein shall be construed as preventing the revocation or suspension of such certificate in case such process is authorized by law. The certificates shall be signed by the examiner and chairman.
- (c) Exhibition of certificates of registry and inspection: The certificates of registry and inspection shall be framed under glass and posted in a conspicuous place in the vessel where it will most likely be observed by passengers and others.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 3.01.

20.0114 Change of master.

Whenever the master or person having charge of a vessel registered under the laws of American Samoa is changed, the owner, or 1 of the owners shall request authorization for such change as soon as possible from the board. Thereupon the board shall endorse upon the certificate of registry and inspection a memorandum of such change, specifying the name of the new master, if qualified, and shall subscribe the memorandum with their names.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 3.02.

20.0115 Failure to report sale or transfer.

If any vessel registered under the laws of American Samoa is sold or transferred in whole or in part, by way of trust, confidence or otherwise, to any other

person and such sale or transfer is not be made known immediately to the board, such vessel, together with her tackle, apparel, and furniture, shall be forfeited. If such vessel, however, is so owned in part only and it is made to appear to the board that any other owner or owners of such vessel was (were) wholly ignorant of the sale or transfer the sale or interest of such owner or owners shall not be subject to such forfeit, and the residue only shall be so forfeited.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 3.03.

20.0116 Name change.

No master, agent or owner shall in any way change the name of a registered vessel without the authorization of the board. There shall be levied a fee of \$100 for every change of a vessel's name.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 3.04.

20.0117 Refusal, revocation, suspension, limitation, or modification of certificates.

A certificate of inspection or registry provided for in this chapter may be refused, revoked, suspended, limited, or modified for any I or combination of the following:

- (1) Failure to comply with any of the provisions of this chapter or valid rules of the board in furtherance of the purpose of this chapter;
- (2) Fraud or misrepresentation in obtaining a registry or certificate of inspection;
- (3) Refusal to permit inspection subsequent to a change of the physical conditions of the vessel.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 3.05.

20.0118 Master and engineer license required.

No person shall operate as the master or engineer of any vessel engaged in the coastwise or interisland traffic of American Samoa and adjacent waters until he has been duly licensed under this chapter.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 6.01.

20.0119 Master qualifications.

Master of American Samoa registered vessels:

- (1) Show written evidence of at least 4 years experience in the deck department of a vessel;

- (2) Successfully pass a physical examination and color blindness test;
- (3) Successfully pass a written and practical examination in seamanship, navigation, rules of the road, chart work, aids to navigation, winds, weather, temperature, repairs to hull, lifesaving gear, rules and regulations;
- (4) Be at least 21 years of age (show documentary evidence);
- (5) Submit character references from at least 3 responsible persons.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 6.02.

20.0120 Engineer's license qualifications.

All persons operating or performing technical duties on vessels engaged in coastwise or interisland traffic in American Samoa or adjacent waters shall be duly licensed as an engineer. The qualifications for issuance of an engineer's license are as follows:

- (1) The individual must be a United States national, United States citizen, or a resident alien who has resided in American Samoa for at least 5 years or has met all requirements of the immigration rules of American Samoa;
- (2) He must provide character references from at least 3 responsible persons, 2 of whom must be vessel's officers;
- (3) He must provide documentary proof that he has had shop experience or other engine room time corresponding to that as follows:
 - (A) He must have at least 18 months experience in the engine department of a motor vessel except as otherwise provided for in this section;
 - (B) For a license not exceeding 150 horsepower, 18 months shop experience as a watch tender or a total of at least 3 years sea experience standing watch in an engine room.
 - (C) For a license of over 150 horsepower and not exceeding 500 horsepower, 2 years shop experience and 1 year sea experience as a watch tender or a total of 4 years sea

experience as a watch tender in an engine room.

(D) For a license over 500 horsepower and not exceeding 750 horsepower 4 years shop experience and 2 years sea experience as a watch tender or a total of 6 years sea experience as a watch tender in an engine room.

(4) All applicants will be required to successfully qualify for the class of license for which they are applying:

(A) The board shall designate upon the license any horsepower of a marine engine on which lie may act:

(B) The term vessel, as used in this section, includes any vessel of 15 gross tons or over propelled by gas, diesel, or diesel-electric power, or other machinery.

(C) The term “shop experience” means time served under apprenticeship or service in any mechanical workshop oilier than auto repair. Mechanical workshop service shall include service in a powerhouse or on heavy equipment, machine shop, or any shop specializing in marine engine repair, diesel engine repair, or electrical repair. Documentary evidence shall be submitted showing at least 2 years experience in any mechanical or electrical shop.

(D) Requirements for officer qualification shall be first, second mate, and assistant engineer.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 6.03.

20.0121 License renewal.

All licenses shall be renewed every 5 years when the holder of the license has been actively engaged in maritime activities for that period continuously, and once every year if the holder is not so engaged.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 6.04.

20.0122 License refusal, revocation, suspension, limitation, modification.

Any license issued by the board may be refused, revoked, suspended, limited or modified by the board for any 1 or combination of the following:

- (1) Fraud or misrepresentation in obtaining a license authorized to be issued by the provisions of this chapter;
- (2) Breach of duty tending to endanger life or property;
- (3) Being under the influence of intoxicating liquor or drugs while actually performing required duties on a vessel;
- (4) Hindering, delaying, or interfering with the board or its authorized representative in the performance of his duties under this chapter;
- (5) Refusal to admit the board or its authorized representative on board the vessel while performing duties under this chapter;
- (6) Violation of any of the provisions of this chapter or any of the rules promulgated by the board;
- (7) Failure to comply with any qualification or requirement provided iii this chapter or any rule promulgated hereunder.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72. § 6.05.

20.0123 Detention of vessels-Safety measure enforcement.

The board may detain any foreign or domestic vessel temporarily to determine if there exists a violation of 20.0401 A.S.C.A., or the rules contained in this title. If after an inspection, the board determines a violation does exist and the safety of the passengers and crew are in danger, the vessel may be restrained or allowed to sail under such limitations as are necessary for the protection of the safety and property of the public and the crew of the vessel.

History: Bd. of Mar. Insp. Regs., eff 16 Ot 72, §7.01.

20.0124 Inspection power unrestricted.

Nothing in the rules set forth in this chapter and elsewhere in this title shall be construed as limiting the board from making such tests or inspections as are

reasonable and practicable to be assured of the seaworthiness and safety of the vessel.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 8.01.

20.0125 Operation despite noncompliance.

The board may allow a vessel limited authority to carry passengers if the vessel owner establishes to the satisfaction of the board he is unable to immediately comply with the rules set forth in this chapter and elsewhere in this title. The authority exercised pursuant to this section shall be in the sole discretion of the board.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 8.02.

20.0126 Violation-Summary fines.

Any person who violates any of the provisions of Chapter 20.02 A.S.C.A., may be subject to a summary fine of \$100 per violation.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 7.02.

20.0128 Violation-Penalties upon conviction.

Notwithstanding any other penalties, any person who is convicted or found guilty in a court of law of violating any section of this chapter or any rules promulgated thereto is guilty of a misdemeanor and shall be fined not more than \$1,000 or be imprisoned not more than 1 year or both.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 7.03.

TITLE 20 – CHAPTER 02 – BOAT OPERATIONS

Sections:

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20.0201	Name and home port marking.
20.0202	Draft numeral markings.
20.0203	Load lines.
20.0204	Emergency steering apparatus
20.0205	Vessel name on equipment.
20.0206	Bulkheads required.
20.0207	Steering gear, whistle, and telegraph tests.
20.0208	Radio equipment and operation.
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20.0214	Engine, machinery inspection-Guard rails and covers.
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- 20.0260 Permitting operation in noncompliance.
- 20.0261 Bilge Pump for emergencies.
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For general, penalty, and other provisions applicable to this chapter, sec 20.01 of this code.

I. PASSENGER AND FREIGHT VESSELS

20.0201 Name and home port markings.

The name of every registered vessel of American Samoa shall be marked on each bow and upon the stern, and the home port shall also be marked upon the stem. These names shall be painted or consist of cut or carved or cast Roman letters in light color on a dark background or in a dark color on a light background, secured in place and to be distinctly visible. The smallest letters shall not be less than 4 inches in size. If any such vessel is found without these names being so marked, the owner, owners, or master shall be liable to penalty of \$100 for each name omitted.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.01.

20.0202 Draft numeral markings.

Numerals indicating the draft shall be permanently secured or cut into the stem and stern of every registered vessel. Measurement shall be in English feet, taken from the bottom of the keel, and extend 1 foot above the maximum draft allowed. The bottom of each numeral shall indicate the draft of that line and each numeral shall be 6 inches high.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.02.

20.0203 Load lines.

The stability of the vessel will be established prior to the establishment of the load waterlines and marks thereof indicating the maximum depth to which any vessel may be safely loaded, and in establishing such load lines, due consideration will be given to, and differentials made for the various types and character of the vessels and trades in which they are engaged provided, that no load line shall be established or marked on any vessel which, in the judgment of the board of marine inspectors is above the actual line of

safety. It shall be the duty of the owner and master of every vessel subject to this section so established to have the load line permanently and conspicuously marked upon the vessel in such manner as the aforesaid board directs and keep the same so marked.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.03.

20.0204 Emergency steering apparatus.

Every vessel shall be equipped with emergency steering apparatus consisting of relieving tackle or hand steering gear by which the vessel can be steered independently of the regular steering gear.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.05.

20.0205 Vessel name on equipment.

All equipment of a vessel such as fire hose, axes, boats, rafts, oars, life preservers, life buoys, wooden benches, and deck chairs shall be painted or branded with the name of the vessel on which they are used.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.06.

20.0206 Bulkheads required.

- (a) Less than 100 gross tons: not less than 4 watertight, transverse bulkheads. There shall be a forepeak bulkhead located not less than 5% of the length of the vessel from the bow, 1 bulkhead at the forward end of machinery space, and 1 bulkhead aft of the machinery space and 1 collision bulkhead after located not less than 5% of the vessel length from the stem; provided, however, if bulkheads provided for in this section are not practical due to construction of the vessel, a permanent flotation medium may be substituted in lieu of the bulkheads. The flotation medium shall be to the satisfaction of the board.
- (b) Bulkheads on vessels of 100 gross tons and up to 300 gross tons: no less than 4 nor more than 7, and spaced as required by the local board. The general structure of the vessel shall determine the actual number of bulkheads, but in all cases there shall be 1 watertight bulkhead just forward of the engine room, 1 watertight bulkhead at the forward end, 1 watertight bulkhead just aft of the engine room and 1 watertight bulkhead at the stern just forward of the steering gear.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.07.

20.0207 Steering gear, whistle, and telegraph tests.

Not more than 12 hours before departure from any port, the steering gear, whistle, and telegraphs between pilothouse and engineroom shall be tested and entered in the ship's logbook.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.08.

20.0208 Radio equipment and operation.

Every vessel shall be equipped with a suitable radio telephone, or with radio transmitter and receivers to send and to receive. Such equipment is to be properly maintained and in work order. A radio check is a requirement not more than 1 hour before departure. Vessels underway shall guard at all times the International Radio Telephone Frequency of 2182 M.H.C. All calls shall be entered in a logbook and a copy shall be filed with Pago Pago Communication Center upon arrival in Pago Pago.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.09.

20.0209 Pilothouse-engineroom alternate communication.

Vessels using telegraph between the pilothouse and engineroom shall also be fitted with a voice tube or sound-powered telephone for the purpose of conversation between pilothouse and engineroom. Vessels equipped with wheel house engine controls shall have an alternate means of communication which may be telegraph, voice-type, or power phone between pilothouse and engineroom.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.10.

20.0210 Machinery inspection-Engineer duty-Negligence accountability.

It shall be the duty of an engineer when he assumes charge of the machinery of a vessel to thoroughly examine same and if he finds any part in need of repairs, he shall immediately report the facts to the master, owner, or agent, and, in the event of a major repair, to the board which shall thereupon investigate and if the former engineer has been negligent in the performance of his duties he may be proceeded against as to revocation or suspension of his license, if licensed in American Samoa.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.11.

20.0211 Machinery-inspection-Standard.

The inspection of machinery prior to and after repair of any vessel is to ensure good working order.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.12.

20.0212 Tail shaft inspection-Dry-docking notice.

- (a) Tail shafts shall be drawn biannually or at the same time as the annual dry-docking if required by the board.
- (b) Whenever any vessel is dry-docked, it shall be the duty of the master, owner, or agent to notify the board so that a thorough examination can be made. No repairs or alterations affecting the safety of the vessel either in regard to hull or machinery shall be made without the knowledge of the board.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.13.

20.0213 Sea connection, bilge pump inspection.

At every dry-docking period all sea connections, together with cocks, valves, and strainers, shall be dismantled if so required and examined and, where required, repaired or replaced. The pumping arrangements, piping, and strainers in all bilge compartments shall be examined and maintained in good order.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.14.

20.0214 Engine, machinery inspection-Guard-rails and covers.

- (a) A complete examination shall be made when required by the board of the main engine and auxiliary engines; all cylinders, pistons, valves, gears, pumps, connecting rods, bearings, guides, and shafting shall be examined. The cylinders, pistons, valves of air compressors shall be examined and renewed where necessary.
- (b) The various engine piping systems, coolers, and oil tanks shall be cleaned if necessary. Where necessary to renew parts, these parts shall be new or approved by time board. Guards and rails: All machinery shall be adequately protected by guard rails or covers so that the danger of accidents is minimized.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.15.

20.0215 Maintenance logbook.

Every master or engineer shall be required to keep a special logbook showing all repairs, replacement, and general maintenance work done as required by this chapter.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.16.

20.0216 Electrical wiring standards.

On all vessels using electrical wiring or electricity for any purpose, the installation shall be in keeping with the best modern practice. Wire shall be of an approved type; (protected) cable shall be required in cargo spaces, storerooms, engine rooms, and in all places where the loads are liable to mechanical injury. Joints in wiring shall be made in metal boxes. When wires are led through beams, frames, or nonwatertight bulkheads, they shall be carried in conduit, armored casing, or bushings. Wire led through watertight bulkheads or decks shall be provided with suitable stuffing boxes. All fixtures, taps, joints, and splices shall be fitted with metal boxes. Boxes exposed to weather, in cargo and machinery spaces, shall be weathertight. Special attention will be given by the board in examining electrical installation to see that it is such as to preclude any danger of fire.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, 4.17.

20.0217 Life preservers-Life jackets.

- (a) Every vessel licensed to operate shall be provided with 1 approved life preservers for each person carried, and an additional number of life preservers to equal at least 10% of the total number of persons carried shall be for children. There shall be an approved child’s lifejacket available for every child carried aboard the vessel.
- (b) Life preservers shall be properly distributed throughout staterooms, crew quarters, and other convenient places for crew and passengers as the board may direct. Lockers, boxes, and closets in which life preservers are stowed shall be plainly marked and life preservers contained therein shall be readily available. A printed notice framed and under glass, shall be posted in each cabin and stateroom informing passengers of the location of the life preservers. At each annual inspection, or oftener if deemed necessary, the life preservers shall be examined by an inspector

of the board to determine serviceability. Life preservers found not to be serviceable shall be removed from the vessel and destroyed. Unserviceable life preservers shall be replaced by an equal number of serviceable life preservers.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.18.

20.0218 Life buoys-Liferings.

- (a) Number Required. Every vessel licensed to operate shall carry approved number of 30- inch life buoys in accordance with the following table:

Length of Vessel	Minimum No. of Buoys	Minimum No. With Water Lights Attached
Under 70 feet	3	1
70 feet and under 110 feet	6	3
110 feet and under 150 feet	8	4

- (b) Distribution and Securing. All life buoys (liferings) shall be distributed and secured as follows: All life buoys shall be so placed as to be readily accessible to the persons on board, and their positions shall be plainly indicated. All life buoys shall always be capable of being cast loose and shall not be permanently secured in any way. One life buoy on each side of the vessel shall have an attached line of at least 15 fathoms in length and 3/4 inch circumference. The self-igniting waterlight required shall be of the approved type. Waterlights for liferafts shall be of the battery-operated self-igniting type.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.19.

20.0219 Lifeboats-Liferafts.

- (a) Every vessel licensed to operate shall carry lifeboats and liferafts, as directed by the board. Lifeboats and liferafts shall be kept clear for launching. The decks on which lifeboats and liferafts are carried shall be kept clear of freight or any other obstruction that would interfere with the immediate launching of the lifeboats or liferafts.
- (b) Care of lifeboats and liferafts: Lifeboats and liferafts shall be striped, cleaned; thoroughly

overhauled, and painted at least once in every 6 months and the board so informed.

(c) Handling of lifeboats and liferafts: All lifeboats shall be stowed in such a way that they can be launched from suitable davits. The davits shall be fitted with blocks and tackle, and other necessary fittings such as fairleads, cleats, and pad eyes, as required for safe launching of the lifeboat.

(d) Equipment for life boats: Every lifeboat required to be carried is to be equipped with the following:

- (1) Boat hooks: 2 boat hooks at least 8 feet long;
- (2) Bucket: 1 bucket with lanyard attached;
- (1) Lifeline: 1 lifeline properly secured the entire length on each side, festooned in bights of not longer than 3 feet with a seine float in each bight;
- (4) Life preservers: 2 life preservers in addition to the vessel's complement of life preservers;
- (5) Oars: 4 oars and a steering oar;
- (6) Rudder and tiller: 1 rudder and 1 tiller complement with pintle fitting into gudgeons on the stem post of the lifeboat;
- (7) Painter: 1 painter of manila rope not less than 2-3/4 inches in circumference and of a length of not less than 3 times the distance between the boat deck and the light sea-going draft secured to the lifeboat, free, and secured to a ring in the liferaft supports onto the check;
- (8) Plugs: drain holes fitted with automatic plugs and 2 caps secured by chain;
- (9) Rowlock: not less than 4 rowlocks attached to lifeboat by chain, plus 1 steeling row lock;
- (10) Drinking cups: 1 drinking cup;
- (11) Drinking water: at least 20 quarts water in sealed containers. Loose equipment shall be kept in a locked watertight box and be

securely attached to the lifeboat to which it belongs;

(12) Flashlight: 1 flashlight, 1 spare bulb and 2 spare battery cells in a watertight container;

(13) Hatchet: 1 hatchet secured in the bow of the lifeboat by a lanyard;

(14) Signal flares: 12 combination smoke and flare distress signals in a watertight container; to be limited to 3 years' service;

(15) Matches: 2 boxes matches in watertight container;

(16) Signal mirror: 2 signal mirrors.

(e) Equipment for liferafts:

(1) Distress signals: 12 combination smoke-and-flare distress signals in a watertight container; to be limited to 3 years' service;

(2) Lifeline: lifeline properly secured entirely around sides and ends of raft, festooned in bights not longer than 3 feet with seine float in each bight; (3) Paddles: 4 paddles;

(4) Painter: 1 painter of manila rope not less than 2-3/4 inches in diameter and of a length of not less than 3 times the distance between height of stowage and vessel's light draft;

(5). Self-igniting waterlight: 1 self-igniting waterlight secured to raft by 1 fathom of 3/4 inch circumference manila line;

(6) Boathook: 1 boathook;

(7) Signal mirror: 2 signal mirrors;

(8) Flashlight: 1 flashlight, 2 spare batteries, 1 spare bulb in a watertight container;

(9) Cup: 1 drinking cup;

(10) Water: 10 quarts water in sealed containers

(11) Care of liferafts: if it is found that deterioration has begun, it shall be corrected even to the extent of replacing with a new raft, if so required by the board;

(12) Capacity: each raft shall have marked upon it, in letters of at least 2 inches, the number

of persons allowed. The capacity in every instance shall conform with international requirements.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.20.

20.0220 Fire axes.

Every vessel shall be required to carry fire axes in accordance with the following table:

Vessel Length	Minimum No. With Water Lights Attached
Under 70 feet	2
Over 70 feet and under 110 feet	3
Over 110 feet and under 150 feet	4

All fire axes are to be located and secured so as to be readily at hand and to be used for emergency purposes only.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.21.

20.0221 Firehoses.

All firehoses shall be tested to a pressure of 100 pounds per square inch at each inspection. Firehose shall be of an approved type, double jacketed. Each firehose shall be stowed immediately adjacent to the fire hydrant and in such a manner as to be readily accessible. All firehose shall be fitted with a proper nozzle, gaskets, and spanner. The spanner shall be secured to the hydrant by a length of chain so as to be readily accessible for use. Firehose shall not be used for any other purpose than fire extinguishing.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.22.

20.0222 Fire pump-Extinguishers and systems.

(a) All vessels of 100 gross tons and under shall be equipped with 1 hand fire pump or a combination fire and bilge pump of not less than 100 cubic inches or a power-driven pump of equivalent of not less than 30 gallons per minute at 60 pounds per square inch at maximum discharge pressure of the pump. This pump is to be in addition to the regular bilge and fire pump as set out below. Vessels over 100 gross tons and under 500 gross tons shall have at least 1 electrical or independently driven pump connected at all times to fire mains, and the pumps shall be capable of delivering a jet of water from the

highest outlet of the fire mains at a gauged pressure of 50 pounds per square inch through a nozzle of not less than 5/8 inch diameter where the hose diameter does not exceed 1-1/2 inches. Outlet of the fire mains shall be of sufficient number and so arranged that any part of the living quarters, whether decks and cargo decks accessible to crew and passengers, may be reached with a single 50 foot length of hoses

- (b) (1) CO2 extinguishers are to be weighed every 6 months and, if found to be more than 10% under the required contents, recharged.
- (2) portable CO2 extinguishers or equivalent shall be carried as in the following table, being minimal requirements:

Vessel Length Number and Size of Extinguishers

Vessel Length	Number and Size of Extinguishers
(A) Under 70 feet	4-15 lbs
(B) Over 70 feet and under 110 feet	6-15 lbs
(C) Over 110 feet and under 150 feet	9-15 lbs

- (3) Extinguishers shall be in general distributed throughout the vessel follows:
 - (A) Paint locker - 1
 - (B) Generator room - 1
 - (C) Radio room - 1
 - (D) Galley - 1
 - (E) Engineroom - 2
 - (F) Crew compartment – 1 for each
 - (G) Pilothouse - 1
 - (H) Lazarette or afterpeak - 1

(c) CO2 , systems for engineroom space: When at the discretion of the board a CO2 smothering system is installed, the quantity of CO2 shall be sufficient to give a gas salutation of 25% of the gross volume of the engineroom. The quantity of

CO₂ required may be determined approximately by the following formula:

$$W L \times H \times D \div 22$$

Where W= Weight of CO₂ required in pounds;

L = Length of engineroom in feet;

B= Breadth of engineroom in feet;

D= Distance in feet from floor plates to underdecks of deck immediately above engineroom.

The system shall be capable of being operated from a convenient and accessible place outside of the space protected.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.23.

20.0223 Sanitation.

It shall be the duty of the master and chief engineer of any vessel to see that such vessel and passenger and crew quarters are kept in a clean and sanitary condition.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.24.

20.0224 Medical supplies-Water containers.

Every vessel licensed to operate under the provisions of this section shall be suitably equipped with an emergency medical kit containing such medical supplies as the board directs. Such medical kit shall be under the responsibility of the master. The vessel shall be subject to frequent inspections of the medical supplies in order to ensure their satisfactory condition and that the types and quantities of supplies are maintained. The master of the vessel is required to keep a treatment book and in it enter all treatments and supplies used as justification for replenishing such supplies. All water containers, excepting closed water tanks, whether filled with fresh water or saltwater, shall be emptied once a week so as to destroy any mosquito larvae which they may contain.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 4.25.

20.0225 Logbook contents-Loading.

(a) Every vessel shall have an official logbook wherein will be entered the following: draft marks prior to departure, radio calls, records of compliance for repairs, replacement and general

maintenance and other matters covered by the rules set forth in this chapter and elsewhere in this title.

- (b) It is unlawful for any vessel subject to the rules established by the board to be so loaded as to submerge in seawater the load line or lines marked upon the vessel. Any master who permits the load line or lines to be submerged may be liable to suspension or revocation of his license, as the board may direct. The official responsible for clearing the vessel shall require the vessel to off-load either passengers, cargo, or both, sufficient so as not to submerge the load line as established by the board. The permanent ballast of the vessel shall not be removed in order to correct an overload.
- (c) Detention of overloaded vessel: If the board has reason to believe, on complaint or otherwise, that a vessel subject to this chapter is about to proceed to sea when loaded in violation of this section, it may detain her provisionally for the purpose of being surveyed. Such vessel may then be examined by the board and be released or required to reload in whole or in part in order to conform to the rules.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.01.

20.0226 Deck cargo.

No deck cargo shall be carried unless written authorization has been granted by the port director in each individual case. A reduction in the number of passengers may be made at the discretion of the port director where a vessel is carrying a deck load. The decision of the port director will be final. No cargo shall be carried in areas so designated on the vessel's certificate.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, 5.02.

20.0227 Passenger limit.

- (a) The maximum number of passengers permitted to be carried on a vessel shall be as determined by the board, and shall be stated on the vessel's certificate of inspection.
- (b) The maximum number of passengers permitted on any vessel of acceptable design and proportions may be determined by a length of rail criterion, deck area criterion, or fixed seating

criterion, whichever permits the greatest number. Where seats are provided in one passenger space and are not provided in other passenger spaces, the number of passengers permitted may be the sum of the number permitted by the seating criterion for the space having seats and the number permitted by the area criterion for the space having no seats. For vessels operating on short runs on protected waters such as ferry vessels, the board, may give special consideration to increases in passenger allowances.

- (1) Length-of-rail criterion: One passenger may be permitted for each 30 inches of rail space available to the passengers at the vessel’s sides and across the transom.
- (2) Deck-area criterion: One passenger may be permitted for each 10 square feet of deck space available for the passenger’s use. In computing such deck area, the areas occupied by the following shall be excluded:
 - (A) Concession stands;
 - (B) Toilets and washrooms;
 - (C) Companionways, stairways, etc.;
 - (D) Spaces occupied by and necessary for handling lifesaving equipment;
 - (E) Spaces below deck which are unsuitable for passengers and which would not normally be used by passengers;
 - (F) Interior passageways less than 30 inches wide and passageways on the open deck less than 18 inches wide.
- (3) Fixed-seating criterion: One passenger may be permitted for each 18 inches of width of fixed seating provided. Rules covering the installation of fixed seating are contained in subsection (d) of this section.

(c) Notwithstanding the number of passengers permitted by any of the criteria described in subsection (b) of this section, the maximum

number may be further limited by stability or subdivision consideration.

- (d) In computing the maximum number of passengers, a vessel may carry children under the age of 1 year who shall not be included. Two children over the age of 1 and under 8 shall be computed as 1 person. Where a vessel is carrying the maximum number of passengers allowed by this section, it is unlawful to carry additional passengers on the crew list, when the sole reason for this is to give transportation to such person from one port to another. The master, owner, or agent of any vessel duly subject to rules in American Samoa shall be liable to a fine of \$25.00 for each and every passenger such vessel is overloaded in addition to suspension or revocation of the master’s license, as the board directs.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.03.

20.0228 Officers and crew-Crew list.

No vessel operated in American Samoa shall depart from any port, harbor, or island unless she has in her service and oil board such complement of licensed officers and crew as is required by her certificate of inspection. The number of licensed officers and crew as is specified by her certificate and shown on the certificate of inspection shall not be increased or decreased without the written approval of the board nor shall any person be added to the crew list unless such person is connected with her ownership and/or navigation. The total number on board shall not exceed the total as entered on the certificate.

History: Bd. of Mar. Insp. Regs., off 16 Oct 72, § 5.04.

20.0229 Arrival and departures reporting.

The master of any vessel licensed to operate in tile inter-island traffic shall communicate by radio all arrival at and departures of his vessel from ports outside of the harbor limits of American Samoa.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 505.

20.0230 Explosives-Inflammables-Dangerous articles.

No comphe, nitroglycelin, naphtha benzine, benzol, kerosene, crude petroleum, compressed gases, both industrial and domestic types, other than in fire extinguishers or CO2 in other containers, or

other, like explosive-burning fluids or gases or other, like dangerous articles shall be carried as freight on any vessels carrying passengers, nor shall gunpowder be carried on any such vessel without specific authority of the board. Nor shall fire extinguisher, CO2 in other containers, oil, vitriol, nitric or other chemical acids be carried on such vessels except on the decks thereof or in such safe part of the vessel as is prescribed by the board. Ship's stores such as paints, turpentine, oils, and other products subject to spontaneous combustion or of an explosive nature may be carried; however, in all instances, these stores shall be kept in lockers, tanks, or containers as prescribed by the board. Nothing in the provisions of this section shall prohibit the use by vessels of gasoline or any other petroleum product when used as a source of motive power of such vessel or for the operation of motor boats, lighting plants, or emergency fire pump, provided the storage and equipment meets the approval of the board. When such products are to be carried, a written request to the board shall be made and approval or disapproval made subject to the existing circumstances.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.06; and Rule 9-75, eff 29 Dec 75, § 1.

20.0231 Lookout-Anchor watch.

Every vessel, when underway during nighttime and periods of poor visibility, shall have a lookout at the forward part of the vessel. A vessel lying at anchor shall keep a proper anchor watch. A watch tender while underway during nighttime shall make an hourly round of the vessel to guard against fire and other dangers. In no instance shall the helmsman be considered as a lookout. Nothing in this section shall exonerate the master or officer in command from the consequence of any neglect to keep a proper lookout or the neglect of any precaution which may be required by the ordinary practice of seamen or by any special circumstances of the case.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.07.

20.0232 Unnecessary whistling.

Unnecessary sounding of a vessel's whistle is prohibited within the harbor limits of American Samoa.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.08.

20.0233 Interfering, unauthorized lights.

It is prohibited to carry or show any lights not required by international rules that will in any way interfere with distinguishing signals or navigation lights.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.09.

20.0234 Searchlight use.

Flashing the rays of a searchlight or other blinding light onto the bridge or into the pilothouse of any vessel underway is prohibited.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.10.

20.0235 Rules of the road.

The masters of all vessels shall be required to be familiar with the international rules of the road and to carry out the provisions contained in those rules at all times. A copy of the International Rules for the Prevention of Collision at Sea shall be on board at all times.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.11.

20.0236 Casualty reporting-Unsafe conditions.

It shall be the duty of all masters, owners, agents, and engineers when a casualty occurs to the vessel's structures or machinery, affecting the seaworthiness of the vessel to report same to the board immediately upon arrival or after the discovery of such unsafe condition.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.12.

20.0237 Departure clearance.

In addition to the report required in 20.0229, each commercial vessel conveying passengers and cargo departing Pago Pago Harbor shall first obtain clearance from the port director. Such clearance shall be obtained during regular hours of the port director and shall be surrendered to the port director if departure of the vessel is during the regular office hours or to a member of the harbor patrol, if departure is after regular office hours. Such clearance shall be dependent upon the prior submission of a predeparture report and copy of the ship's cargo manifest and a list of the names of the passengers.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 5.13.

II. SMALL VESSELS

20.0240 Applicability-Purpose.

The purpose of this article is to regulate motor vessels 40 feet in length and under, but not less than 16 feet, which, are or will be engaged in fishing and other like activities for which remuneration may be received. The purpose of this article is to apply rules which will, in effect, minimize the need for extensive air/sea rescue as has been the practice in the past, of the local fishing fleet in American Samoa.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, Ch. 9 (part); and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0241 Length defined.

“Length” is measured from end to end over the deck excluding sheer, and means a straight line measurement of the overall length from foremost part of the vessel to the outmost part of the vessel, and shall be measured parallel to the central line. Bowsprits, bumpkins, rudders, and outboard motor racks and similar fittings attachments are not to be included in the measurements. Length shall be stated in feet and inches.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.01; and Rule 4.79 eff 14 Jul 76, § 1 (part).

20.0242 Operator license.

Every operator of any vessel 40 feet in length and under, but not less than 16 feet, shall have in his possession a license to operate vessels of this design and length, or a marine board license covering vessels of not more than 15 tons.

- (a) The operator shall have the knowledge as required for the operation of vessels and shall take an examination prepared by the board. A license to operate this type vessel shall be issued upon passing of the examination.
- (b) The operator must have a rudimentary knowledge of engine and other boat hull repairs.
- (c) The operator shall have an operating license in ‘us possession, which shall be available for immediate production to boarding officers at any time during which he operates the vessel.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72., § 9.02 (c); and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0243 Fuel tanks.

Each vessel shall have fuel tanks constructed to the requirements of the board. All fuel tanks shall be suitably vented.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.03; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0244 Navigational lights.

Each vessel shall be equipped with navigational lights in accordance with the international rules of the road.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.04; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0245 Fire extinguishers.

Each vessel shall have on board fire extinguishers, not to be less than two 5-lb. chemical or CO., extinguishers.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.05; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0246 Distress signals.

Each vessel shall have pyrotechnic day and night signals as contained in the rules of the board covering such articles.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.06; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0247 Anchor.

Each vessel shall have on board a 5/8-inch-diameter nylon anchor line of not less than 50 fathoms in length, attached, to a suitable chain of not less than 4 fathoms, attached to an anchor of not less than 20 lbs., a Danforth or like anchor.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.07; and Rule 4.76, eff 14 Jul 76, § 1 (part).

20.0248 Tow line.

Each vessel will have on board at all times 150 feet of 3/4-inch-diameter nylon or like rope tow lines with suitable eyes at each end.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.08; and Rule. 4-76, eff 14 Jul 76, § 1 (part).

20.0249 Liferings.

Each vessel shall have at least 1 lifering attached to 65 feet of 1/4-inch-diameter line.

History: Bd. of Mar. Insp., eff 16 Oct 72, § 9.09; and Rule 4.76, eff 14 Jul 76, § 1 (part).

20.0250 Compass.

Each vessel shall have at all times a compass which has been adjusted and the vessel swung at least once every 2 years.

History: Bd. of Mar. Insp., eff 16 Oct 72, § 9-10; and Rule 4-76, eff 7-14.76, § 1 (part).

20.0251 Sweeps.

Each vessel shall have two 16-foot sweeps to be used in the event of power failure.

History: Bd. of Mar. Insp., eff 16 Oct 72, § 9.11; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0252 Radar reflector.

Each vessel shall have a metallic radar reflector, of fixed or collapsible design of not more than 30 inches in diameter and not less than 12 inches in diameter, with a suitable extension mast of not less than 6 feet high.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.12; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0253 Radio transceiver-Status and Position reports-Radio operation.

Each vessel shall have a suitable radio transceiver aboard which shall be kept in operating condition at all times. Status and position reports shall be made to Pago Pago radio every 4 hours, starting from prior to leaving the port, and are to continue every 4 hours thereafter or until the vessel is berthed: A suitable log shall be kept for all voice transmission and answers received. Radio batteries shall be separated from engine starting batteries. Minimum frequencies required are 2182, 2638 single side band or VHF channel 16.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.13; and Rule 4.76 eff 14 Jul 76, § 1 (part).

20.0254 Watertight bulkheads.

Each vessel shall have at least 2 watertight bulkheads, and either compartment shall be capable of sustaining the flotation of the vessel.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.14; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0255 Emergency rations-Water stores.

Each vessel shall carry at all times sufficient emergency rations for 6 people for a period of 5 days.

This may be in the form of biscuits and canned beef or other like substances. Each vessel shall also carry aboard a minimum of 2 pints water per person per day-for a period of 5 days.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.15; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0256 Inspection.

Each vessel shall be inspected as the board deems fit and each vessel shall have an overhaul or drydocking inspection on shore at least once every 2 years.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.16; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0257 Life preservers.

Each vessel shall carry aboard sufficient U.S. Coast Guard-approved lifejackets for all personnel plus 10% or 2 extra. All lifesaving equipment required by this article must be legibly marked as specified by the board rules set out in this title.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.17; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0258 Flame arrestor-Backfire flare control.

All gasoline-engined vessels shall be equipped with acceptable means of backfire flame control. The flame arrestor shall be suitably secured to the air intake with flare-type connections.

History: Bd. of Mar. Insp., Regs., eff 16 Oct 72, § 9.18; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0259 Operation in noncompliance prohibited.

No person shall operate a vessel to which this article applies unless it meets the requirements of this article.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.19 and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0260 Permitting operation in noncompliance.

The owner shall not allow any person to operate a vessel to which this article applies unless it meets the requirements of the article.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.19; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0261 Bilge pump for emergencies.

All vessels shall be equipped with a suitable emergency bilge pump. Such pumps shall be manual,

mechanical, or electrical, and of suitable size as determined by having a capability of not less than 15 gallons per minute.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.20; and Rule 4-76, eff 14 Jul 76, § 1 (part).

20.0262 Violation-Penalty.

Persons who violate any provision of this article or the rules issued hereunder shall be fined pursuant to 20.0242 A.S.C.A.

History: Bd. of Mar. Insp. Regs., eff 16 Oct 72, § 9.21; and Rule 4-76, eff 14 Jul 76, § 1 (part).

TITLE 20 – CHAPTER 03 – MOORING AND UNMOORING

Sections:

- 20.0301 Authority.
- 20.0302 Purpose.
- 20.0303 Fees for anchorage or buoy moorage-Customs clearance and visiting approval.
- 20.0304 Water-Visitor permits- Assignments-Private buoys.

20.0301 Authority.

The rule codified in this chapter is established under the provisions of 4.1002, 4.1004, 20.1503(b), and 20.1602 A.S.C.A.

History: Rule 1-75, eff 2 Mar 78, § 1.

20.0302 Purpose.

It is the purpose of this chapter to establish harbor mooring and anchorage fees for pleasure craft and other commercial craft within harbors of American Samoa as indicated in 20.0303. This chapter does not apply to fishing and other vessels which are berthed at facilities owned or leased by commercial canneries, nor to any vessels at Marine Railway piers and docks.

History: Rule 1-78, eff 2 Mar 78, § 2.

20.0303 Fees for anchorage or buoy moorage-Customs clearance and visiting approval.

- (a) The following mooring, anchorage, and buoy fees are in effect and applicable as follows:

- (1) Transient pleasure craft, first 7 days: 7 days anchorage privileges without charges;
- (2) Transient pleasure craft, first 3 months after first 7 days: Mooring and anchorage in excess of 7 days will be subject to following rates:

Rates per Month or Fraction Thereof

Length of Vessel	Anchorage Privileges	Buoy Privileges
Under 20 feet	\$7.50	\$8.50
20 feet but less than 30	8.50	12.50
30 feet but less than 40	12.50	15.00
40 feet but less than 50	15.00	17.50
50 feet but less than 60	17.50	22.50
60 feet and over	22.50	27.50

- (3) Transient pleasure craft, after 3 months of chargeable time:

Rates per Month or Fraction Thereof

Length of Vessel	Anchorage Privileges	Buoy Privileges
Under 20 feet	\$15.00	\$17.00
20 feet but less than 30	17.00	25.00
30 feet but less than 40	25.00	30.00
40 feet but less than 50	30.00	35.00
50 feet but less than 60	35.00	45.00
60 feet and over	45.00	55.00

The foregoing schedule may be waived with the written approval of the Governor;

- (4) Commercial vessels: Commercial vessels, other fishing or other vessels serving commercial canneries, at anchor or moored at buoys shall be charged mooring fees at the rate of 1/2 the dockage rate as provided in 20.1602 (a) (2) (C), A.S.C.A., whether or not a launch or other craft is used between vessel and shore.

- (b) Transient pleasure craft subject to the fees set out in this section after 7 days will continue to be charged while in Samoa waters, even though visiting other areas. Overseas owners are advised that they must clear through customs and will need approval in writing from the village pulenu'u to visit other areas in American Samoa.
- (e) For purpose of this chapter, “transient pleasure craft” includes the vessels of persons who are residing in American Samoa only because of employment by the ASG.

History: Rule 1-78, eff 2 Mar 75, 3 (c).

20.0304 Water-Visitor permits-Assignments-Private buoys.

- (a) Owners and operators of vessels are advised that water may be available provided prior arrangements have been made with the water utilities branch and the harbormaster has designated a place where water can be taken aboard. The current charge for water is \$0.25 per short ton (240 fluid gallons).
- (b) Arriving visitors will report to the immigration office to obtain a visitor’s permit. The initial permit will be for 30 days. Extended visits in excess of 30 days will require an additional permit and approval of the immigration office, and a copy of such permit must be presented to the harbormaster. There is no charge to obtain a permit. Should a permit to visit be denied by the immigration office, harbor privileges will be considered voided and the vessel concerned must prepare to depart American Samoa.
- (c) The director of port administration or his duly authorized representative has full authority to assign vessels to berth or anchorage. No movements within the harbor, change of berth or anchorage will be permitted unless prior approval has been obtained from the port director or his duly authorized representative. When a conflict is apparent between the transients and residents in the marina vicinity, the director and supervisor of parks and recreation will mutually resolve the problem.
- (d) Sports fishermen and boaters are encouraged to utilize the marina complex facilities. The project was a joint undertaking of the ASG and the

bureau of outdoor recreation to increase interest and encourage water-oriented activities.

- (e) No private buoys or other project will be placed in the waters of the harbor unless prior approval has been obtained from the director of port administration and, the Governor. Such buoys or other objects must be removed at the expense of the owner thereof, either upon direction of the port director or upon departure from American Samoa.

History: Rule 1-78, eff 2 Mar 78, § 4 (e).

TITLE 20 – CHAPTER 04 – DOCKAGE AND WHARFAGE

Sections:

- I. TRANSSHIPMENT INCENTIVES*
 - 20.0401 Authority.
 - 20.0402 Purpose.
 - 20.0403 Wharfage, tonnage, and storage charges.
- II. GOVERNMENT FLOATING EQUIPMENT*
 - 20.0410 Authority.
 - 20.0411 Availability.
 - 20.0412 Use charges-Equipment described.
 - 20.0413 Applicability of charges.

For provisions on moorage fees within this code, see 20.03.

I. TRANSSHIPMENT INCENTIVES

20.0401 Authority.

The executive order embodied in Rule 13-80 and codified in this article is issued under the authority of Section 6 of Article 1V of the Revised Constitution of American Samoa, and 20.1607(g) A.S.C.A.

History: Rule 13-80 (Ex. Ord. 4-1980), eff 1 Jul 80, § 1.

20.0402 Purpose.

This article modifies the wharfage charge, tonnage dues, and storage charges on cargo transshipped through the Port of Pago Pago to other Pacific island destinations outside of the territory in order to

enhance the desirability and use of the port as a transshipment point in the South Pacific region.

History: Rule 13-80 (Ex. Ord. 4-1980), eff 1 Jul 80, § 2.

20.0403 Wharfage, tonnage, and storage charges.

(a) The following charges and dues on cargo transshipped through the Port of Pago Pago to other Pacific island destinations outside of the territory are waived:

- (1) Wharfage charge on cargo loaded imposed by 20.1607 (b) A.S.C.A.;
- (2) Tonnage dues on cargo out imposed by 20.1607 (c) (2) (B) A.S.C.A.; and
- (3) Storage charges imposed by 20.1607 (c) (3) A.S.C.A., and 20.1607 (c) (5) (A) A.S.C.A., for the first 30 days.

(b) Storage charges after 30 days shall be as follows:

- (1) Imposed by 20.1607 (c) (3) A.S.C.A.: \$ 1 per ton or fraction thereof; and
- (2) Imposed by 20.1607 (c) (5) (A) A.S.C.A.: \$0.53 per day.

History: Rule 13-80 (Ex. Ord. 4-1980), eff 1 Jul 80, § 3.

II. GOVERNMENT FLOATING EQUIPMENT

20.0410 Authority.

The rule codified in this article is adopted under tile authority of 20.1605 A.S.C.A.

History: Rule 1-76, eff 24 Feb 76, § 1.

20.0411 Availability.

Motor launches, tugs and other floating equipment owned by the ASG and described in this article may be used, at the established use charges, when available and at the convenience of the department of port administration.

History: Rule 1-76, eff 24 Feb 76, § 2.

20.0412 Use charges-Equipment described.

(a) Charges for use of the following floating equipment owned by the ASG shall be:

<u>Description of Equipment</u>	<u>Use Charges</u>
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(1) Tug Tatoso

Twin screws, twin rudders; length, 85 feet; 1530 horsepower; \$150 per hour speed, 10 knots; range, 5,000 miles.	\$150 per hour \$165 per hour outside normal working hours
Work equipment: firefighting and deep-sea towing capacity.	\$2,400 per day
Electronic equipment: Loran; radar, fathometer, automatic direction finder VHF voice radio (2182 kc etc.), single side band voice radio (5827.5 kh), VHF radio (156. mhz and 156.8 mHz).	\$200 minimum

(2) Tug Tava'e

Twin-screw, twin-rudder general purpose rug; length, 55 feet; 280 horsepower; speed, 9 knots range, 600 miles.	\$100 per hour, \$110 per hour outside normal working hours,
----------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------

(3) Tug Toloa

Similar to Tug Tava'e, except 340 shaft horsepower.	\$100 per hour, \$110 per hour outside normal working hours, \$1,600 per day, \$133 minimum.
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(4) Landing craft utility

Navy-design, steel-hulled utility landing-craft; length, 115 feet; width, 35 feet	\$100 per hour, \$110 per hour outside normal working hours,
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3 engines, triple screws; speed, 5 to 6 knots; range, 250 miles.	\$2,000 per day,
Cargo capacity: approximately 200 tons.	\$200 minimum
Electronic equipment: automatic direction finder, VHF voice radio (2 182 ke), single side band voice radio (5827.5 ke).	

(5) Masimasi

Single-screw, ferro-concrete line boat and tender; length, 26 feet.	As line boat: \$50 per hour, \$55 per hour outside normal working hours \$67 minimum
	Other trips: \$530 per hour, \$33 per hour outside normal working hours, \$40 minimum

(6) Talitiga II

Single-screw line boat and tender, length, 28 feet.	As line boat: \$50 per hour, \$55 per hour outside normal working hours, \$67 minimum.
	Other trips: \$30 per hour, \$33 per hour outside normal working hours, \$40 minimum.

(7) Matu'u

Crane Barge No. 4; flat barge; length, 110 feet; width, 44 feet; molded depth, 12 feet.	\$600 plus \$60 per hour in excess of
-----------------------------------------------------------------------------------------	---------------------------------------

	8 hours outside harbor, daily rate only
Work equipment: diesel-electric, 25-ton, 100-foot-radiuscrane.	
Cargo capacity: 500 tons.	

(8) Canton Barge

Sea going barge, flat, steel, open; light draft; 110 feet by 32 feet by 2 feet; nonself-propelled.	\$20 per hour, \$100 Minimum
Cargo capacity 500 tons.	\$320 per day.

(b) Per purposes of this section, normal working hours shall be 8 a.m. to 5 p.m.

(c) Charges may be adjusted for long hauls or extended contracts.

History: Rule 1-76, eff 24 Feb 76, § 3(c).

20.0413 Applicability of charges.

The charges established by this article apply to both public agencies and private uses.

History: Rule 1-76, eff 24 Feb 76, § 4.

END OF TITLE 20 – HARBORS AND NAVIGATION

TITLE 21 – AERONAUTICS

Chapters:

- 01 Airport Operations
- 02 Aircraft Landing and Parking Charges

TITLE 21 – CHAPTER 01 – AIRPORT OPERATIONS

Sections:

- 21.0101 Authority.
- 21.0102 Approval and incorporation.

Annex A

21.0101 Authority.

The rule codified in this chapter is issued under the authority of Section 6 of Article IV of the Revised Constitution of American Samoa and 21.0515 A.S.C.A.

History: Rule 2-1989, eff 28 June 89 § 2.

21.0102 Approval and incorporation.

The Airport Certification Manual of 1989, including all appendices as revised, from time to time, prepared and maintained by the airport management division department of port administration pursuant to 25.0515 A.S.C.A., is approved and incorporated in full by reference herein, and is attached to this chapter as Annex A.

History: Rule 2-1989, eff 28 June 89. § 2.

ANNEX A

PAGO PAGO INTERNATIONAL AIRPORT
AIRPORT CERTIFICATION MANUAL
AIRPORT MANAGEMENT DIVISION
DEPARTMENT OF PORT ADMINISTRATION
AMERICAN SAMOA GOVERNMENT

This Airport Certification Manual appends Federal Aviation Regulation Part 139 as it applies to Pago Pago International Airport. Compliance with this Manual and the regulation will be the responsibility of the American Samoa Government.

AIRPORT CERTIFICATION MANUAL

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The average number of scheduled departures per day of air carrier aircraft computed on the basis of the busiest three (3) consecutive months of the immediately preceding twelve (12) calendar months: If the average daily departures are expected to increase, the “average” daily departures may be determined by planned rather than current activities in a manner acceptable to the Administrator.

Index

An airport ranking according to the type and quantity of aircraft rescue and firefighting equipment and agent required; which is determined by the “LENGTH” and frequency of air carriers aircraft served by the airport.

Movement Area

Runways, taxiways and other areas of an airport which are used for all taxing, takeoff and landing of aircraft, exclusive of loading ramps and aircraft parking areas.

Safety Area

A designated area abutting the edges of a runway or taxiway intended to reduce the risk of damage to an aircraft inadvertently leaving the runway or taxiway.

Wildlife Hazard

A potential for a damaging aircraft collision with wildlife on or near an airport, including domestic animals while out of the control of their owners.

AIRPORT CERTIFICATION MANUAL

CHAPTER 1

COMPLIANCES

1.1 INTRODUCTION

This Manual includes operating procedures and a description of facilities and equipment used to satisfy the requirements of FAR Part 139. Personnel involved with the operations of this airport are directed to perform their duties and responsibilities in accordance with the procedures contained in this Manual.

This Manual will be kept current and an approved copy will be available at the airport for inspection, upon request. A complete and current copy signed by

the Governor of American Samoa will be provided to the Federal Aviation Administration.

1.2 INSPECTION AUTHORITY

The FAA Administrator will be allowed to make any inspections, including unannounced inspections, or test to determine compliance with Part 139 of the Federal Aviation Regulations and this Manual.

1.3 ASSURANCES

Management of Pago Pago International Airport will provide the necessary operating procedures, facilities and equipment descriptions, responsibility assignments, and other information needed by personnel concerned and involved with the operations of this airport in order to comply with FAR Part 139. The airport management will:

- a) Maintain qualified personnel to comply with the requirements outlined in this Manual.
- b) Provide materials, labor and equipment that is necessary to maintain the airport at least equal in condition, quality, and quantity to the standards currently required for the issuance of the airport operating certificate: and
- c) Notify air carrier of airport-related conditions that may affect the safe operations of the air carriers.

1.4 DEVIATIONS

In emergency conditions requiring immediate action for the protection of life or property involving the transportation of persons by air carriers, the American Samoa Government (ASG) may deviate from any requirements of Subpart D of FAR Part 139, to the extent required to meet that emergency. In such an event, the American Samoa Government (ASG) shall, as soon as practicable, but not later than 14 days after the emergency, report in writing to the FAA Regional Director stating the nature, extent, and duration of the deviation.

1.5 PROCEDURES FOR MAINTAINING ACM

The Airport Certification Manual (ACM) for Pago Pago International Airport will be kept current and will be under the direction of the Airport Manager. Pertinent portions of the approved certification manual will be furnished to all personnel and

organizations responsible for their implementation. New pages for any changes, corrections, addendum or deletions will be furnished to those persons or organizations that hold copies of this Manual, for their update. Portions of the text affected by a revision will be indicated by a line on the outer margin of the page.

A letter of transmittal to all Manual holders will provide instructions for replacing, removing or inserting new pages in their copy of the Manual. Each new narrative page, exhibit, chart or table will maintain the same page (sequential) numbering system as in the current manual.

Distribution will be made after two copies have been reviewed and approved by the FAA. Distribution List:

1. Governor's Office
2. Director of Port Administration
3. ARFF
4. Director of Public Works
5. FAA - Resident Director
6. ATCT
7. Commissioner of Public Safety
8. Director of Health
9. Attorney General
10. PRI (Pacific Resources Inc.)
11. Shell Oil Company

CHAPTER 2

ADMINISTRATIVE AND ORGANIZATION

2.1 OWNERSHIP AND LOCATION

Pago Pago International Airport is owned and operated by the American Samoa Government, and is located approximately seven (7) miles from the Central Business area of Pago Pago village. Exhibit 2-1 is a current Airport Layout Plan showing the existing facilities at Pago Pago international Airport.

2.2 MANAGEMENT

Pago Pago International Airport is operated by the American Samoa Government under the Department of Port Administration, who has appointed the Director of Port Administration to direct the airport. Additional operating staff, under the direction of the Director of Port Administration are charged with the responsibilities of managing and operating the day-to-day affairs of this airport, and are:

Airport Manager

Assistance Airport Manager

Senior Supervisor

Shift Supervisors

Chief of Security

Supervisor of Maintenance

Chief of Aircraft Rescue Fire Fighting

2.3 LINE OF SUCCESSION

Exhibit 2-2, Organizational Chart, illustrates the organizational relationships of key operating personnel at Pago Pago International Airport and the line of succession in the absence of the Airport Manager.

CHAPTER 3

OPERATIONAL DETERMINATIONS

3.1 EXEMPTIONS

Pago Pago international Airport is subject to the following exemption to the requirements of FAR Part 139:

Section: 139.311 (a) (4), Runway Holding Positions Markings and Signs, 01/01/89.

3.2 LIMITATIONS

Pago Pago International Airport is not subject to any limitation of the requirements of FAR Part 129.

3.3 GRID MAP

A grid map of Pago Pago International Airport, which is contained in the Airport Emergency Plan (AEP) is furnished to all organizations that may be involved with any emergency or disaster occurring at the airport.

3.4 RUN WAY/TAXIWAY IDENTIFICATION

Exhibit 2-1 Airport Layout Plan presents the runway/taxiway system at Pago Pago International Airport.

Two runways in the 5-23 and 8-25 direction, runway 5-23 provide the landing and takeoff facilities for all major air service air carriers serving Pago Pago International Airport, Exhibit 2-1, runway 8-26 was justified by its use as a crosswind runway especially by smaller aircrafts. This runway can be used by large aircrafts for both taxiing and as an overnight area for parking. When this runway is used for parking, it is closed and a notam issued.

TABLE 3-1
RUNWAYS AND TAXIWAYS

RUNWAYS AND TAXIWAYS					
Runway	Length	Width	Surface	Strength	Safety Area
5-23	9,000'	150'	ASPH-G (grvd)	S-140,D190 DT-380,DDT375 (in THSDS)	200' each side of Center line of runway, 200' beyond R/W-23 THSDS and 500' wide X 1000' long beyond R/W-THSDS.
8-26	3,800'	75'	ASPH-G	S-75,D-166 DT-237, DDT 600 (in THSDS)	200' each side of DT-237,DDT center line of runway, 200' beyond R/W-23 THSDS and 500' wide X 1000' long beyond R/W-THSDS
Taxiways					
A	3900'	75'	ASPH-G	x	200'
C	1935'	75'	ASPH-G	x	180'
D	200'	75'	ASPH-G	x	120'

Aprons

Main Terminal Apron can accommodate three (3) large bodied jet aircrafts with three fueling pits. Domestic Apron consists of one fuel pit.

3.5 OBSTRUCTIONS

Each object in any area within the authority of Pago Pago International Airport that is identified as an obstruction under FAR Part 77, will either be removed or marked and lighted, as appropriate. Exhibit 3-1, Lighted Obstructions identifies the location of all marked and lighted obstructions. The maintenance of all obstruction markings is the responsibility of the Maintenance Shop Supervisor. See Exhibit 2-2 Organizational Chart.

3.6 MOVEMENT & SAFETY AREAS, EMERGENCY ROADS

Exhibit 3-2, Movement & Safety Areas and Emergency Roads, highlights the runway and taxiway system at Pago Pago International Airport. Also illustrated are the safety areas for each runway and taxiway - Table 3-1 provides the dimensional criteria for these safety areas that were in place on December 31, 1987.

Service roads that are designated as Emergency Access Roads are accented. These roads offer the most expedient airfield/runway access, but do not preclude any other service road at Pago Pago International Airport from being used in an emergency situation.

CHAPTER 4

OPERATIONAL PROCEDURES AND RESPONSIBILITIES

4.1 PROCEDURES COMPLIANCE

Instructions on each elements, as required by FAR Part 139, have been organized to provide each person on the airport staff, or others that are responsible for specific segments, clear and concise directions on what, when and how to perform their duties. Each of the major topics contained in this chapter adds a broad description of tasks for each major category either written or illustrated on an exhibit.

4.1.1 Airport Self-Inspections

Pago Pago International Airport has prepared for the staff, procedures and instructions, as well as training,

on conducting safety inspections. These inspections provide condition reports which advise the airport management, FAA (ATCT) and airline tenants when unsafe airport conditions are noted during the inspection. Airport self-inspections include:

- a. Periodic Daily Inspections - seven days a week. Each airport safety inspection will be conducted by the on Duty Airport Supervisor and each supervisor will fill out a required airport condition reports, Exhibit 4-1, Airport Self-Inspection Form, for their responsible assignment. Periodic daily inspections will include the following major areas:

- Paved areas
- Unpaved areas (if any)
- Safety areas
- Marking and lighting
- Security fencing
- Traffic and wind direction indicators
- Wildlife activity

- b. Unusual Conditions Inspections - During periods of unusual conditions or events at Pago Pago International Airport, the Airport Manager will perform inspections to determine whether or not unsafe airport conditions exist. These reports will follow the format presented in Exhibit 4-1, “Airport Self-Inspection Form”. Unusual Conditions that will require inspections include, but are not limited to:

- Construction Activities - Conducted during and after contractor’s work hours.
- Meteorological Conditions - Conducted after storms, high winds, hurricanes, tornados, etc..
- Aircraft Incident - Immediately after any incident involving aircraft.

- c. Periodic Inspections - The following categories will be inspected on a periodic basis in order to insure safe operations at Pago Pago International Airport to protect property and lives.

These inspections will be done by the Airport Manager.

- Fuel Farm/Storage Area - will be inspected quarterly using Fire Safety Inspection form (Exhibit 4-2) for Fuel Farm/Storage Area.
- Mobile Fuelers - will be inspected quarterly. Fire Safety Inspections - Mobile Fuelers (Exhibit 4-3) will be used.

4.1.2 Other Requirements

Any directive, order or published Advisory Circular (AC) issued by the FAA that addresses airport safety will be considered by the Pago Pago International Airport management. Clarification, interpretation and instructional directions of any directive, order or AC, that require changes to this ACS and/or the procedures presented herein, will be handled by the FAA Regional Office and the Airport Certification Inspectors.

4.1.3 Recordkeeping

Inspection records from daily, unusual conditions and post-aircraft incident, as well as the periodic inspections described above, will be maintained on file for no less than 6 months after the inspection date at the Airport Manager’s Office and will be made available for inspection by FAA on request.

4.2 CORRECTIVE ACTION

Pago Pago international Airport maintains both qualified staff and equipment to maintain and/or promptly repair:

- Runway, taxiway, loading ramp, and parking area on the airport that is available for air carrier aircraft.
- Runway and taxiway safety are to the extent practicable. Runway and taxiway marking and lighting.
- Firefighting equipment to the minimum required to appropriately serve the largest scheduled air carrier aircraft operating at this airport.
- Traffic and wind direction indicators at this airport.

4.3 RESPONSIBILITIES

The Airport Manager, is responsible for the day-to-day operations of Pago Pago International Airport. These duties, which include managerial elements as required in maintaining this airport's operating certificate under Part 139 specifically include, but are not limited to:

- a. Maintaining the ACS and records required for inspection by the FAA upon request.
- b. Developing operational procedures for inspecting, maintaining and repairing the airport to the degree necessary to ensure safe aircraft operations by air carrier aircraft.
- c. Provide the necessary training and additional instructions on how, what and when to perform their duties as assigned.

In the absence of the Airport Manager, the line of succession is automatically vested with the same authority to the Assistant Manager, as shown on Exhibit 2-2 Organizational Chart.

4.4 UTILITIES INTERRUPTIONS

All plans and specifications dealing with construction at Pago Pago International Airport must provide the contractor with as-built utility drawings for airport owned, public owned and FAA owned utilities.

The plans and specifications are developed by the Department of Public Works.

Preconstruction meetings are held with the contractor, in which further instructions are given concerning utility interruptions. The Airport Manager conducts these preconstruction meetings to emphasize the requirements as they relate to FAR Part 139.

CHAPTER 5

AIRCRAFT MOVEMENT AREA SAFETY

5.1 PAVED AREAS

The maintenance of all paved surfaces on the side of the terminal is the responsibility of the Airport Manager. See Exhibit 2-2, Organizational Chart, for the line of succession. Part 139 requirements for pavement maintenance are summarized as follows: (Airport Paving Repair Guide for detailed instructions for labor and materials).

1. Pavement edges - may not exceed 3" difference between abutting pavement sections, id full strength pavement and abutting shoulders.
2. Pavement holes - none may exceed 3" in depth nor have a slope which, from any point the hole to the nearest lip, is or exceeds 45 degrees measured from the surface plane.
3. Cracks and surface variations - none which could repair directional control of air carrier aircraft.
4. Surface debris and contaminants - remove promptly and completely as practicable.
5. Chemical cleaning solvents - remove as soon as possible, consistent with manufacturer's instructions.
6. Ponding - maintain drainage and slope to prevent pending that obscures markings or repairs safe aircraft operations.

Pavement areas in Exhibit 5-1 will not have any of the conditions listed.

5.2 UNPAVED AREAS

Pago Pago International Airport does not have any air carrier aircraft runways, taxiways or aprons that are unpaved.

5.3 SAFETY AREAS

Safety Area dimensions at Pago Pago International Airport are as follows:

- Runway 5-23, 200' feet on each side of the center line of the runway and 200' feet beyond runway 23 threshold and 500' wide x 1000' long beyond runway S Threshold.
- Runway 8-26, 200' feet on each side of the center line of the runway and 200' beyond runway 26 Threshold and 400' wide x 1000' long beyond runway 8 Threshold.
- Partial Parallel Taxiway A, safety area is 200', taxiway C, is 180' and taxiway D, is 120' feet wide.

The maintenance of all runway and taxiway safety areas on the airport is the responsibility of the Maintenance Supervisor. See Exhibit 2-2, Organizational Chart, for the line of succession. Part

139 requirements for safety Area maintenance are summarized below.

1. Each safety area is cleared and graded and will be maintained free of potentially hazardous ruts, humps, depressions, or other surface variations.
2. Each safety area is drained by grading and storm sewers to prevent water accumulation.
3. Each safety area is capable under dry conditions of supporting aircraft rescue and firefighting equipment, and will support the occasional passage of aircraft without causing major damage to the aircraft. Manhole covers are constructed from steel of sufficient thickness and strength to support equipment and aircraft.
4. No objects will be located in any safety area, except for objects that must be located in the, safety areas because of their function. Objects currently located in the safety areas are constructed on frangibly mounted structures of the lowest practical height and are maintained so that the frangible point is no higher than three inches above grade. Any future objects that will be located in the safety areas because of their function will be constructed on frangibly mounted structures.

Exhibit 5-2 Safety Areas, highlights the Inspection and Maintenance responsibilities, the tasks to be performed, the time and the type of form that are needed for this task.

5.4 MARKING AND LIGHTING

5.4.1 Runway/Taxiway Marking and Lighting

Runways (5-23 & 8.26) and taxiways are marked in accordance with the standards for marking paved areas on airports described in FAA Advisory Circular 150/5340-1E.

b. Lighting

1. Runway 5/23 - High Intensity Runway Lights
2. Runway 8/26 - Medium Intensity Runway Lights

Runway lights are split white/amber on the last 2,000 feet of Runway 23 and Runway 8 with the amber side

facing the approach end of the runways. Taxiway edge lighting is installed on all taxiways.

5.4.2 Obstruction Lighting

The following obstruction lights mark those obstructions that have been determined by an FAA aeronautical study as necessary:

1. Primary Wind Cones
2. Logotala hill
3. Apron Light Pole
4. Vasi Power and Control Station
5. ILS Localizer and Glide Slope
6. DME Antenna
7. VORTAC
8. Anemometer Pole

5.4.3 Runway and Taxiway Guidance Signs

Pago Pago International Airport has the following guidance signs that identify runway hold lines, taxiing routes and other information necessary for the operations of air carrier aircraft. These signs are lighted for aircraft operations during low visibility periods:

- I. Runway Identification Signs
2. Taxiway Identification Signs

5.4.4. Other Airport Lighting

All other lighting on the airport for aprons, parking areas, roadways, fuel storage areas, and buildings is adjusted or shielded to prevent interference with air traffic control and aircraft operations.

NAVAIDS - The FAA Field Sector Office is responsible for maintenance of the FAA NAVAIDS at the airport if any FAA NAVAIDS are found to be inoperable, the Airport Manager will notify the Field Sector Office thru ATCT.

The part 139 requirements for marking and lighting maintenance are summarized below see the Marking and Lighting Maintenance Repair Guide for detailed instructions for labor and materials.

The following marking and lighting systems are provided and are operable:

- a. Ground guidance signs identifying taxi routes.
- b. Runway markings appropriate to authorized operations.
- c. Taxiway centerline and edge markings.
- d. Runway lights to support night operations appropriate for the approved instrument approach procedures for that runway.
- e. Taxiway lighting for taxiways which serve runways used for night operations by air carrier aircraft with over thirty (30) passenger seats.
- f. Obstruction lighting for obstructions identified under FAR Part 77.
- g. Any lighting including apron, vehicle and aircraft parking areas, roadways, fuel storage areas, buildings, etc., shall be adjusted or shielded to prevent interference with aircraft operations and air traffic control.

The maintenance of all marking and lighting at Pago Pago International Airport, is the responsibility of the Maintenance Supervisor. See Exhibit 2-2, Organizational Chart, for line of succession.

CHAPTER 6

AIRCRAFT AND AIRPORT SAFETY

6.1 AIRCRAFT RESCUE AND FIREFIGHTING (ARFF)

6.1.1 ARFF Index

Pago Pago International Airport is classified is an Index B airport, which air carrier service s less than 5 daily departure. ARFF equipment appropriate to this index will be provided during all air carrier operations unless otherwise reduced in accordance with Section 6.1.5 of this manual.

6.1.2 ARFF Equipment

Exhibit 6.1 ARFF Equipment, is a listing of Aircraft Rescue and Firefighting equipment, quantity of fire fighting agents contained in each unit, and the response times called for in FAR Part 139.3 191(1) will be met. Each ARFF vehicle is equipped with two-

way voice radio communication between Air Traffic Control Tower (ATCT) and all other emergency vehicles as well as flashing beacon and distinguishable color and markings to enhance with the background environment and to optimize daytime and night time visibility.

6.1.3 Control of ARFF

The Aircraft Rescue and Firefighting equipment, supplies and manpower are under the control of ASG, Department of Port Administration, Airport Management Division.

6.1.4 ATCT Relationship

The Air Traffic Control Tower (ATCT) maintains both radio and telephone contact with Rescue Zero. In case of emergency involving air carrier aircraft, the ATCT will contact and provide the details of the emergency, including type of aircraft, approximate location, arrival or departing aircraft, etc.. The ATCT will also request AREF standby where potential aircraft emergency or alert is occurring.

Rescue Zero, will alert ATCT if emergency call has been received by them in order to assist in advising air carrier air traffic of the routing of ARFF involving airport runways, taxiways and aprons.

6.1.5 Reduced ARFF Coverage

Each vehicle shall be maintained in an operable condition and will be protected from the weather. If a required firefighting vehicle becomes inoperative, each air carrier user and the FAA shall be so notified in accordance with Section 7.7 of this Manual. If the vehicle cannot be repaired or replaced within 48 hours, air carrier service will be reduced until the appropriate level of service is restored and a NOTAM is issued in accordance with Section 7.7 of this Manual.

6.1.6 Communications

Rescue Zero is equipped with radio and telephone equipment used for communications.

6.1.7 Inoperative Vehicle.

Any vehicle and its fire protection equipment that is listed on Exhibit 6-1 that becomes incapable of fully responding to the needs of an air carrier aircraft will be considered as “out-of-service”. The Rescue Zero

unit will inform the Airport Manager and the ATCT when any vehicle or fire protection equipment becomes inoperative and will provide an estimate of the length of time it will take to repair. The Airport Manager will notify the FAA Regional Director and each air carrier using the airport if replacement equipment is not available immediately.

If the vehicle cannot be repaired or replaced with equivalent equipment within 48 hours, the Airport Manager must be notified. The Airport Manager will issue a NOTAM (see exhibit 44) that the airport index must be reduced immediately.

6.1 .8 Response Requirements.

At least one required airport firefighting vehicle can reach the midpoint of the farthest air carrier runway and begin extinguishing agent application within 3 minutes from the time of alarm. All other required vehicles can respond in the same manner within 4 minutes. Periodically the Airport Manager initiates drills to insure that the fire fighters maintain the established response times required by FAR Part 139.

6.1.9 Personnel

a. Training.

All ARFF personnel are properly trained to perform their duties in a manner acceptable and in accordance with 139.3190). Each assigned firefighter has had training and/or participated in at least one live fire drill per year and has received instructions in the following areas.

1. Airport familiarization.
2. Aircraft familiarization.
3. Rescue and firefighter personnel safety.
4. Familiarization with the emergency communications system on the airport, including fire alarms.
5. Use of the fire hoses, nozzles, turrets, and appliances used by the airport for compliance with this part.
6. Types and application of the extinguishing agents used by the airport for compliance with this part.

7. Forced entry into aircraft, ventilation of aircraft, extraction of person from aircraft, and evacuation assistance.
8. Firefigliting operations.
9. Adapting and using structural firefighting and rescue equipment for aircraft rescue and firefighting service.
10. Aircraft cargo hazards and considerations.
11. Familiarization with the firefighter's duties under the airport emergency plan.
12. Basic Emergency Medical Care - forty (40) hours.

Training records for each firefighter are maintained at the Airport Manager's Office for the duration of employment.

b. Emergency Medical Care

A minimum of one person shall be available during each air carrier operation that has had at least 40 hours training and is current in basic emergency medical care including bleeding, cardiopulmonary resuscitation, shock, primary patient survey, injuries to the skull, spine, chest, and extremities, internal injuries moving patients, burns and triage.

Aircraft Rescue and Firefighting (ARFF) equipment and personnel are under the direction and responsibility of the Fire Chief of the Rescue Zero unit who is responsible to the Airport Manager for all requirements covered under FAR Part 139. The ARFF maintains a line of succession that covers the responsibilities of equipment maintenance and personnel training.

Part 139 requirements for ARFF equipment are:

1. Approval of repair of vehicles and equipment, as well as alarm and communication equipment
2. Issue notices on ARFF equipment status, when they become inoperative.

6.1.10 Alarm System

Alarm and communications systems are tested on the following levels:

1. Radio (121.9 mhz) daily use by ARFF personnel.

2. Telephone - Daily
3. Emergency siren test daily by ATCT after advising Rescue Zero dispatcher.

6.1.11 Emergency Access Road

Exhibit 3-2 discussed in Section 3.6, Movement and Safety Areas, Emergency Road, highlights the service road directly in front of Pago Tower which has been designated as an Emergency Access Road for ARFF equipment to all runway, ATCT and the Rescue Zero Unit have 1 copy of this plan and during an emergency condition will alert and advise ground taxiing aircraft that Emergency Vehicle are approaching the taxiway/service road intersections: ARFF Station to Runway 5-23

6.2 HAZARDOUS MATERIALS

6.2.1 HAZMAT (Hazardous Materials)

Pago Pago International Airport employees do not act as hazardous cargo handling agents, regulated by 49 ARFF Part 71.

The designated parking area for “Hot Cargo” at the airport is at runway 8-26. (See Exhibit.

6.2 Hot Cargo and Bomb Search area). Any aircraft landing at the airport with a reported problem with hazardous materials such as a leaking container, will be directed to park at the “Hot Cargo” area by ATCT, until declared safe by firefighting personnel.

6.2.2 Fuel

The following procedures for safe fuel handling and inspection of fueling facilities at Pago Pago International Airport will be followed by fueling tenants and personnel who handle fuel at the airport.

1. No aircraft shall be refueled, defueled or oil serviced while aircraft engines are running or aircraft is being warmed by application of heat or while such aircraft is in a hangar or an enclosed space.
2. No person shall smoke or permit any open flame within 100 feet of any aircraft undergoing fuel service or within at least 50 feet from any hangar or building.
3. Prior to the fuel servicing of any aircraft, the aircraft and the fuel dispensing equipment shall

be grounded to a point or points of zero electrical potential in the order indicated below and when complete, in the reverse order to prevent the potential of static ignition of volatile liquids.

- a. Aircraft to apron or ground.
- b. Refueling unit to ground.
- c. Refueling unit to aircraft.
- d. Refueling nozzle to aircraft.

The foregoing procedure necessarily modified will apply to a storage dumping, and the filling of dispensing equipment.

4. When malfunction of refueling equipment is detected, all refueling shall cease immediately and the malfunction remedial or entire unit replaced by another. Any malfunctions or irregularity detected on or within the aircraft being serviced will be brought to the attention of the airport owner or operator immediately.
5. Crews engaged in the fueling and defueling of aircraft, the filling of dispenser equipment or dumping into a drain with aviation fuel will exercise extreme caution to prevent spills. When spills occur, servicing will cease and spills be washed down, removed or absorbed with suitable materials.
6. Fueling pumps, meter, hoses, nozzles, fire extinguishers, and grounding devices will be kept in first class condition at all times.
7. During fuel handling operations in connection with any aircraft, no less than two co2 or approved dry chemical fire extinguishers (151 lbs. or larger) shall be immediately available for use in connection therewith.
8. No person shall perform or allow the performance of any refueling operation during an electrical storm.
9. No person shall use any material or equipment during fueling or defueling of aircraft which is likely to cause a spark or ignition.
10. No person shall start the engine of any aircraft when there is any gasoline on the ground under such aircraft.

11. All hoses, funnels, and appurtenances used in fueling and defueling operations shall be equipped with a grounding device to prevent ignition of volatile liquids.
12. No aircraft shall be fueled or defueled while passengers are on board the aircraft unless a passenger loading ramp is in place at the cabin door of the aircraft, the aircraft door is in open position, and a cabin attendant is present at or near the cabin door.
13. Aircraft containing explosive or Dangerous Article will not be refueled while air carrier aircraft are in the vicinity of the refueling pad.
14. Fuel storage areas are posted with “No Smoking” signs and are locked when unattended.

Pago Pago International Airport has established procedures for inspection of the fueling facilities. Inspections are performed by the airport staff using forms shown on Exhibits 4-2 and 4-3, discussed earlier in Section 4.3 Responsibilities.

6.3 TRAFFIC AND WIND DIRECTION INDICATORS

Exhibit 6-3 Traffic and Wind Direction Indicators, shows the location of these facilities at Pago Pago International Airport. The following describes these:

Windcone with segmented circle is located on the landward side north of runway approximately 5,300 feet from Threshold of runway 5 and about 300 feet west of taxiway “CHARLIE” turn off and about 205 feet from center of runway 5/23. Another windcone is located on the seaward side south of the runway 240 feet from the center line and is 800 feet from runway 5 threshold. Windcone at runway 8/26 area is located landward side north of runway approximately 300 feet from Threshold of runway 8, and about 175 feet from center line of runway 8-26.

The maintenance of all wind cones on the airfield is the responsibility of the Maintenance Supervisor.

The Part 139 requirements for traffic and wind direction indicators are:

- inspect and maintain traffic and wind direction indicators

- Replace or repair lighting

6.4 AIRPORT EMERGENCY PLAN (AEP)

6.4.1 Introduction

This plan sets forth responsibilities for all agencies involved in the control of emergency situations on the airport. The objective is to provide for prompt assembly and the orderly and effective application of all available and required efforts: personnel, equipment and facilities to control and minimize the impact of emergencies on public safety, property and the operational status of the airport.

This plan, prior to its submission for FAA approval has been coordinated with all agencies concerned.

The following sections in this Manual presents the responsibilities and coordination procedures for the Pago Pago International Airport Emergency Plan.

6.4.2 Emergency Coordinator

The Airport Manager shall serve as Emergency Coordinator and will exercise complete control during emergency or disaster condition and shall assure full implementation of these procedures during any emergency or disaster condition.

6.4.3 Agencies/Individuals

The following represent a list of the agencies/individuals who will have responsibilities during an emergency/disaster on the airport. These representatives are not the only agencies/individuals required. Should the situation require, other qualified agencies will be contacted.

1. Director, LBJ Medical Center
2. Director, Public Works
3. Commissioner, Public Safety
4. Manager, ATCT

NOTE: (See Appendix 2 - for Letter of Agreement)

6.4.4 Emergency Alarm System

There is an emergency siren with an alarm button located in the Tower cab to alert ARFF station.

6.4.5 Review of Emergency Plan

The Airport Manager will conduct both plan review sessions and full-scale Airport Emergency Plan (AEP) exercise with all agencies and parties that have responsibilities in the execution of the emergency plan. Review sessions will be held once a year and a full-scale exercise will be scheduled, once every (3 year minimum).

6.4.6 Aircraft Accident and Incidents

1. Aircraft Rescue and Firefighting.

The ARFF station shall be alerted when, in the opinion of any of the following, a potential or actual emergency exists:

- a. FAA Facility personnel on duty.
- b. The pilot of the aircraft concerned.
- c. The operator of the aircraft or his representative

2. Traffic Control Tower (ATCT)

- a. The Tower shall alert the ARFF station. Listed below in priority are means for contacting the ARFF station. Emergency siren with alarm button in Tower cab.

Normal Telephone System - (699-9181)

- b. When an emergency occurs, the Tower shall control all aircraft (air and ground) so as to avoid conflicts within the area of the emergency. This also applies when routes within the airport proper are required for movements of local emergency equipment responding to or returning from an emergency.
- c. If an aircraft becomes disabled on or near a runway, the runway shall be closed until the aircraft is moved from the runway area and the runway is free of debris.
- d. If in the opinion of the Tower personnel, upon seeing the accident, it appears that there could be several injuries, they are to state so on their initial call on the 121.9 radio freq., so as to alert all agencies to prepare to put this plan and other agency plans into effect.

- e. If airport escort vehicles are needed to direct emergency vehicles, the Tower will maintain communications with these vehicles.

3. Reporting Accidents:

The Airport Manager will immediately notify the Federal Aviation Administration (FAA) to report what has happened. It will be the responsibility of FAA or NTSB to determine when the aircraft can be moved. This notification will not relieve the aircraft operator from reporting the accident or incident.

6.4.7 Bomb Threat Incident

1. General

- a. At present, the American Samoa Government does not have any qualified explosive ordinance disposal (EOD) specialist, nor is there any FBI representative stationed in American Samoa. Therefore, dealing with any bomb threat incident at Pago Pago International Airport (PPIA), must by necessity be made with a realistic view of relying on the cooperative efforts of all airport and airline employees concerned without the immediate direct support of the FBI or EOD,
- b. If the circumstances are determined to be serious enough to warrant notification and request for assistance of the FBI and the 6th EOD Unit (Fort Shafter) the Airport Manager will relay this request to the Los Angeles, Civil Aviation Security Field Office, through the communication facilities of the FAA Air Traffic Control Tower (ATCT).
- c. Under the conditions mentioned above, the following procedures will be implemented in the event of threat of sabotage involving a bomb or other explosive/incendiary device.

2. Bomb Threat Management

- a. Action upon receipt of threat:

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- b. Any airport, airline, concession or government agency employee may be the recipient of a bomb threat directed at any airport, facility, or an aircraft. The most common media used by a threat maker is the telephone. The recipient of such a call should remain calm and try to obtain as much information from the caller as possible and to write it down as soon as practicable noting a description of the caller's voice and any background noise. As a minimum, the following information should be elicited from the caller whenever possible.
 1. Territorial Police Communication Center "911" or 633-1111
 2. Airport Manager
699-9101
 3. FAA Air Traffic Control Tower
699-9195
 - (a) If the Airport Manager specifically requests for FBI and EOD assistance, ATCT will notify Los Angeles, CASFO accordingly.
 4. Medical assistance, if determined necessary
633-1222
 - c. Location of bomb/device. (it on an aircraft, obtain the identity of the air carrier, flight number and exact location of the device on the aircraft).
 - d. Expected time of denotation.
 - e. Type of bomb: i. e., type detonator used, container appearance.
 - f. Reason for planting the bomb, and any other question to keep the caller talking as long as possible.
 - g. Threats may also originate from personal contact or by some form of a note or correspondence. In case of the former, attempt to maintain surveillance of the suspect pending arrival of security personnel and note any identifying data of any vehicle (make, color, and license number) if used by the suspect. In case of a note or correspondence, take prompt action to notify appropriate authorities and retain the written materials as evidence with minimum handling.
3. Notification
 - a. Recipient of bomb threat call shall immediately notify the Airport Security Police (ASP) Dispatcher (Phone: 6999116) or the management of the airline threatened. ASP watch Commander and Shift Supervisor will in turn, notify the following:
 - b. The carrier concerned, when learning of possible bomb aboard its aircraft, will in turn notify.
 - a) Pilot in Command (if airborne).
 - b) Airport Manager or his representative
699-9102
 1. Notify FAA ATCT to relay information to Chief, CASFO and if determined necessary request FBI and EOD assistance.
 - c) U.S. Postal Service.
633-4051
4. Threat Evaluation
 - a. Threat to Aircraft: Each air carrier which serve PPG have its own internal bomb threat procedures and is responsible for determining action to be taken; i.e., if the threat is specifically against a particular aircraft or flight taxiing on the ground inspection of aircraft is required by regulations for both U.S. and foreign air carriers. If the aircraft is in flight, the pilot in command must be notified and he decides on the emergency action he considers necessary.
 5. Threat to Airport Facilities:
 - a. In the event information is received that a bomb or other explosive has been placed on or about an airport facility that is available

to, and used by the general public, the Airport Manager or his designated representative will determine the required action.

- b. in the event the threat involves an airport facility leased to a tenant or concessionaire, the determination of required action will be the responsibility of the lessee concerned, except in areas adjoining public areas where such areas would be in jeopardy should a bomb detonate. In the latter instances, the Airport Manager or his representative will determine the required action.

6. Search Procedures - Parked Aircraft

- a. When the air carrier authorities determine the threat to be a specific threat, all passengers will be immediately deplaned with all of their carry on baggage and the aircraft relocated to a position at least 300 feet from other aircraft or building. (The Airport Manager has predesignated the aircraft paved parking area of Runway 8-26 as the isolation hardstand for threatened aircraft. Runway 8-26 will be closed to air traffic when an aircraft is parked at the location).
- b. All hold baggage, freight and mail will then be unloaded and removed to a distance of at least 300 feet from the aircraft, where the appropriate search will be conducted by the carrier authorities.
- c. An arriving or returning aircraft will be directed to park at the predesignated isolation hardstand. Passengers will be immediately deplaned at that location and directed towards the airport terminal building for cover and further processing.
- d. The ASP, augmented by the Territorial Police, when possible, will provide the necessary evacuation, traffic and crowd control support functions.
- e. If a suspect item is found aboard the threatened aircraft, the air carrier representative will obtain instruction from his corporate office as to the subsequent

action to be taken. The Airport Manager or his representative will offer to arrange for EOD assistance from Honolulu, time and circumstance permitting.

7. Search Procedures - Airport Terminal Facilities

- a. The Airport Manager or his representative will determine the actions to be taken in case of a bomb threat directed against any airport terminal structures or facilities.
- b. The Airport Security Police and airport employees will be called upon to assist in the search for any bomb or explosive device. The ASP will also assist in the evacuation of personnel when such action is determined necessary by the Airport Manager or his representative. Tenants and concessionaires will be required to conduct simultaneous searches of their respective leased area within the airport terminal facilities.
- c. If a suspect item is found, no attempt should be made to touch or move the suspect item. Take immediate action to clear the area of all personnel or evacuate the facility if necessary. In the meantime, the Airport Manager or his representative will attempt to confirm with ATCT and Chief, CASFO.

6.4.8 Airport Structural Fires

A. Condition

A fire involving a building or buildings on the airport, including those in which aircraft are housed.

B. Initial Alarm

Anyone observing an airport structural fire should promptly notify the ARFF, either by radio, telephone, or in person.

C. Rescue Zero Dispatcher

- 1. Immediately dispatch ARFE equipment to the scene of the fire.
- 2. Notify Airport Manger and Airport Fire Chief.

3. Airport Management Division staff should assist to the degree that personnel and work load permits to:
 - a. notify building occupants, if necessary, by the most practical and expeditious means.
 - b. notify occupants and of nearby buildings that may be endangered.
- D. During an ARFF response to a structural fire, a NOTAM will be issued and the air carriers at the Airport will be advised. The ARFF equipment will be returned to the station at the earliest opportunity.

D. Airport Fire Chief

1. Proceed without delay to scene fire/emergency.
2. Notify Airport Manager if more fire/crash equipment is required.
3. When emergency is under control remain at scene until relieved by Airport Manager.

E. Airport Emergency Operations Staff

The responsibilities and actions of the Airport Emergency Operations Staff are essentially the same as for aircraft emergencies, as modified by the particular circumstances of the fire. They will be guided accordingly.

6.4.9 NATURAL DISASTER - STORMS

A. Condition

Hurricane or other storms involving winds of high velocity for which there is advance warning.

B. Airport Manager

1. Notify all airport tenants.
2. Advise aircraft owners to disperse aircraft to airports outside the danger area, tie them down securely, or move them into hangars, if available.
3. Check shelter areas to insure that they are stocked with supplies, food, and equipment.

4. Assume overall direction of the activities of the airport Emergency Operations staff.
5. Direct evacuation or removal to shelter areas when all protective measures have been taken that can be safely done and direct egress from shelter when the storm has passed.

C. Airport Fire Chief

Give precedence to aircraft operations until such time as operations are no longer practicable due to storm,

2. Be prepared to fight structural fires, the possibility of fire is high, due to broken power lines.

6.4.10 RADIOLOGICAL INCIDENTS

A. Condition

Two situations are covered by the section:

The accidental spillage of radioactive materials in commercial shipment and accidents involving aircraft carrying nuclear weapons.

B. ATCT

1. Notify ARFF Dispatcher giving adequate information for further relays to appropriate personnel.
2. As directed by the Airport Manager, ATCT will advise aircraft not to land, take-off, or taxiing through the contaminated area. This is to avoid spreading the contamination.

C. ARFF Dispatcher

- I. Notify Airport Fire Chief and Airport Manager if any inflight radioactive emergencies on aircraft intending to land at the airport. This will apply to both military aircraft carrying a nuclear weapon or aircraft carrying radioactive material in any other form or container.
2. Advise military authorities or local operator of aircraft, if requested, by the pilot.

RADIATION
SHIPMENTS

ACCIDENTS-COMMERCIAL

If a container breaks and spillage occurs, the possible spread of contamination by vehicles moving through the radioactive area or by people tracking about are the primary problems. If radioactive materials are disturbed or if winds or a thermal column from an aircraft fire are present, the radioactive material could become airborne and be carried some distance.

A. DIRECTOR CIVIL DEFENSE

1. Keep unauthorized person out of the area. Establish a cordon around the aircraft to prevent the entry of unauthorized persons to the scene. Set the area boundary so that no spillage from containers will be tracked about.
2. Monitor the area for radiation, if the container is not intact or the aircraft is on fire.
3. Only rescue crews should be permitted within 15,000 feet downwind of accident site, if radioactive smoke-borne or wind-carried particles are found to exist.
4. Decontaminate area and other affected buildings, emergency equipment, personnel, aircraft, etc..

NOTE: If the radioisotope container is found unbroken, the problem is over as far as the radiation is concerned. The material should be held in custody until disposal instructions are received from AEC. Some shipments are accompanied by a courier designated by AEC who in effect “owns” the material and is responsible for it. If he survives the accident, he retains custody. Radiological assistance can be obtained by calling the nearest U.S. Atomic Energy Commission Office.

B. Airport Fire Chief

1. Assure that the Commissioner of Public Safety has been notified, if the Airport Manager has not already done so.
2. Assure that ARFF crew are wearing protective clothing and self-contained breathing apparatus.
3. Rescue of person in the aircraft should not be delayed because of possible presence of

radioactivity will not change the rescue operations ordinarily used for crash in which radioactivity is not present.

RADIOACTIVE ACCIDENTS-NUCLEAR WEAPONS

In an aircraft accident involving a nuclear weapon, several hazards may be present that do not occur in a commercial shipment of radioisotopes. Blasts of varying degree may occur as a result of the detonation of the high explosives in the weapon; toxic or caustic fumes may be given off by burning high explosives; large quantities of radioactive material may be scattered; and radioactive plutonium oxide may be carried over considerable distances by smoke. Detonation of the high explosives and the presence of toxic or caustic gases are things with which the welltrained firefighter should be familiar. The following therefore, will deal primarily with the radiological aspects of the (ASAC 12-90) problem. The aircraft commander will so notify ATCT who will relay the information to Rescue Zero.

A. Rescue Zero Dispatcher

Relay aircraft commander’s message to the Airport Fire Chief and Airport Manager. This message will be an unclassified transmission and will advise;

1. That the cargo is hazardous (which can be high explosive bombs, nuclear weapons, or components or other cargo that may explode when exposed to fire or impact).
2. The location of the explosive cargo, i.e., bomb bay fuselage wings (means under the wings), or under fuselage.
3. The aircraft commander’s best estimate of the time available for fighting the fire prior to withdrawing before detonation.
4. That emergency procedures should be followed accordingly.

B. Airport Manager

If an aircraft accident/crash occurs, notify U.S. Atomic Emergency commission and ask for radiological assistance. Calls may also be made to the ADC/DOD Joint Nuclear Accident Coordination Centre, Albuquerque, New Mexico (Telephone —

Area Code: (505) 264 - 4677. Notify Security Officer (Military of local).

C. Commissioner of Public Safety

1. As soon as the aircraft has landed and come to a stop, the controlled area should be marked off and security guards posted. Do not allow souvenir collecting, preserve the accident scene intact for the review of the Government Authorities;
2. if the AEC special teams have not arrived by the time that the fire is under control, all personnel who have been engaged in the fire-fighting and rescue operations¹ including the aircraft crew members, should be kept under surveillance, unless they require immediate medical attention, until arrival of the teams. Do not admit anyone to the area except the AEC teams.
3. Do not attempt to clean up the site of a radiation accident. This can be dangerous. This special AEC teams have been trained to do this. Upon arrival of these teams, all personnel and equipment held at the controlled perimeter will be monitored and decontaminated as required.

6.4.11 AIRCRAFT AIR PIRACY (Hijacking)

A. General

1. Due to the absence of any permanently assigned representatives of the FBI, Explosive Ordinance Disposal Team, and FAA Civil Aviation Security Inspector in American Samoa in case of an attempted or actual air piracy incident at Pago Pago International Airport will of necessity, require maximum usage of the FAA Air Traffic Control Tower (ATCT) to maintain continuous contact with the designated representative of the FAA or of the FBI through the Chief, Civil Aviation Security Division, FAA Western Pacific Region.

B. Responsibilities for Direction of Action

1. Under the provisions of Public Law 93-366 enacted on August 05, 1974, the Administrator of the Federal Aviation

Administration (FAA), has been assigned exclusive responsibility for the direction of any law enforcement activity affecting the safety of persons aboard aircraft in flight involved in the commissions of an offense under Section 902 (i) 902 (n) of the Federal Aviation Act of 1958, as amended.

2. When a report of a hijacking or suspected act of air piracy occurs when the aircraft is in flight (from the moment when all external doors are closed following embarkation until the moment when one such door is opened for disembarkation), the pilot in command of the aircraft exercises normal operational control of the flight. The designated representative of the airline through the local Chief, FAA Civil Aviation Security Division will have the exclusive responsibility for direction of any law enforcement activity related to the on-going incident to include requesting the assistance of the local FBI, as well as giving full consideration to the express wishes of the pilot-in-command.
3. When a report of a hijacking or suspected act of air piracy occurs, when an aircraft is not in flight, i.e., prior to the moment when all external doors are closed for enforcement action after giving full consideration to the expressed wishes of the pilot-in-command, the responsible official of the airline involved, and the designated representative of the FAA through the local Chief Civil Aviation Security Division.
4. The decision of the designated representative of the FAA through the local Chief, FAA Civil Aviation Security Division, will prevail in those instances where a question arises as to whether an aircraft is in flight or is not in flight.

C. Procedures for PPG Personnel

1. The Airport Management representative in coordination with the Chief, ATCT, establish a Command Post at the Airport Rescue Fire Fighting station, Manager, ATCT will be requested to establish

telephonic contact with Los Angeles CASGO at telephone number (213) 215-2280.

2. In no case should the Airport Manager take any direct action involving the actual hijacking underway.
3. In the event of an attempted hijacking underway aboard an aircraft on the apron hardstand, the Airport Management representative will be responsible for protecting the public in adjoining areas and directing the Airport Security Police in securing the areas surrounding the aircraft.
4. If the situation is under the control of the FBI (C. 3. above), follow instructions issued by the FBI via the open communication media.
5. If the situation falls under the jurisdiction of the FAA (13.2, above), follow instructions issued by the designated representative of the FAA through the Chief, CASFO, via the communication media.
6. If the hijacked aircraft is parked at the gate position, the Airport Management representative should instruct the carriers at adjacent positions to relocate their aircraft if such relocation can be reasonably accomplished. Under no circumstances will carriers at adjacent gates be allowed to continue boarding procedures.

Unlawful Interference with Aircraft Operations:

A. REFERENCES:

FAA Administrator's exclusive responsibilities under the provisions of Public Law 93-366, Title 11 - "Air Transportation Security Act of 1973" Section 316 (e) (2) "Overall Federal Responsibilities".

B. NOTIFICATION:

1. First agency airline or tenant aware of unlawful interference with Aircraft Operations notifies airport Operations Communication Center (Airport Security Police Dispatcher).

2. Airport Security Police Watch Commander takes Action to arrest suspect responsible and notifies Chief of Airport Police or his assistant, Airport Manager and FAA ATCT.
3. FAA ATCT notifies Civil Aviation Security Field Office, FAA Los Angeles.
4. CASFO, notifies FBI, Honolulu, telephone number 521-1411.

C. RESPONSIBILITIES:

Chief of Airport Police or his assistant assumes Law Enforcement Jurisdiction pending the arrival of FBI representative.

6.4.12 Failure of Power for Movement Area Lighting

One (1) 356 kva permanently installed generator providing emergency standby power for runway, taxiway and ramp lighting and minimum power necessary to operate the other required facilities are maintained on the airport. Should efforts fail to restore movement area lighting, those portions affected will be closed to air carrier operations and NOTAM per Part 139.339.

6.4.13 Water Rescue

Upon notification of an aircraft ditching in waters, adjacent to the airport, Rescue Zero Unit with water rescue personnel and equipment will proceed to the site and execute rescue as required. Water Transportation Division will be notified by Rescue Zero Dispatcher for assistance when needed.

Rescue Zero unit has an eighteen (18) feet avon sea rider with a minimum crew of two (2) and can accommodate approximately twenty (20) people.

In addition to the above, Water Transportation Division have the following water equipment and personnel when needed:

1. One (1) seventy-seven (77) footer landing craft with a crew of six (6) capable of accommodating seventy-five (75) people.
2. Two (2) forty-footer tugs with crews of six (6) each and capabilities of accommodating eighty (80) people.

6.4.14 Medical Assistance

AMERICAN SAMOA ADMINISTRATIVE CODE – 2023 EDITION

- The following medical facility is located within seven (7) miles of the airport and have the following normal capacities:

Hospital	# Beds	Emergency Room Capacity
LBJ Medical Center Faga'alu, American Samoa	160	20

The above is listed as normal capacity. The hospital has a disaster plan by which it is able to handle emergencies with casualties well in excess of the maximum number which the Pago Pago International Airport could be expected to experience.

- Responding ambulances and other available transportation would be provided by the following agencies:

LBJ Medical Center, Territorial Fire Department and Motor Pool.

6.4.15 Handling of Disaster Victims

The following facilities will be utilized for disaster victims:

Building/ Structures

- Uninjured ARFF Facilities
- Injured ARFF Facilities
- Deceased ARFF Facilities

The LBJ Medical Center will be responsible for the marshalling, transportation, and care of ambulatory injured, and uninjured victims other ASG agencies will assist if needed.

6.4.16 Crowd Control

Airport and Territorial Police will be responsible for crowd control.

6.4.17 Emergency Plan Telephone Numbers

- Airport Personnel

Airport Manager Solomua M. Leota

Assistant Airport Manager Jackson Ameperosa

Senior Supervisor Robert McMullin

Chief, Airport Police Tupufia Soa

Chief, ARFF Vitale So'oto

Supervisor, Maintenance Otto Ah Ching

Air Traffic Control Tower

Civil Aviation Security Field Office

L.A. Los Angeles (213) 215-2280

2. Emergency Medical Agencies: 911

LBJ Medical Center (684)633-1222

Territorial Fire Department Emergency 911

Fire Department Office (684)633-5858

Police Emergency 911

Public Safety Department (684)633-1111

Aviation Agencies

Local FAA Resident

Director (684)699-9485

Civil Aviation Security Field Office Honolulu
(808)541-1243

Aircraft Removal Department of Public Works
(684)633-4141

The Part 139 Airport Emergency Plan Coordination is summarized below. See the Airport Emergency Plan for detailed instructions involving emergency coordination:

- Exercise complete control during emergency or disaster conditions and assure full implementation of these procedures during any emergency or disaster condition.
- Restore the airport operations to normal operations or as soon as possible.
- Issue all notifications informing the aircraft personnel, the FAA and the airport tenants C the airport's operational status.

CHAPTER 7

AIRPORT SAFETY CONTROL

7.1 AIRPORT SELF-INSPECTION

Procedures for the tasks and frequencies for the Airport Self-Inspection is described in Chapter 4 of this Manual.

The following list the type of forms to be used:

1. Periodic Daily Inspections - use the Airport Self-Inspection form Exhibit 4-1
2. Unusual Conditions Inspections - use the Airport Self-Inspection form - Exhibit 4-1
3. Periodic Inspections
 - a. Fuel Farms/Storage Area - use Exhibit 4-2, Fire Safety Inspection Fuel Farm/Storage Area form.
 - b. Mobile Fuelers - use Exhibit 4-3, Fire Safety Inspection, Mobile Fuelers form.

The Airport Self-Inspection program is the responsibility of the Airport Manager. See Exhibit 2-2, Organizational Chart, for the line of succession.

7.2 GROUND VEHICLES

Ground vehicles that operate in the movement (runway/taxiway) and safety areas at Pago Pago International Airport are restricted to those vehicles that are:

1. Equipped With Two-Way Radios: All vehicles authorized to operate on movement areas are equipped with twoway radios capable of transmitting and receiving on 121.9 mhz. These are the only vehicles permitted on the aircraft movement areas. [Any time one of these vehicles enters the aircraft movement areas, they will maintain contact with the ATCT who will have control of their movements.] Airport Operator’s Permits are issued to all drivers operating vehicles within the movement areas. Prior to issuance of such, a test is given to each operator to assure that he or she has the knowledge of safety procedures when driving on the aircraft movement area.
2. No Radio-Under Escort: - If the need arises for a vehicle which does not have a radio to enter the aircraft movement area, a vehicle with a radio will act as an escort to the necessary area and remain with that vehicle until it has left the aircraft movement area. In any event, an appropriate radio will be used to contact or monitor appropriate frequencies.

3. Two-Way Radio Failure: - If communications should happen to fail while a vehicle is in the aircraft movement area, the ATCT will have two methods of contacting the vehicle. First the tower will raise and lower the runway and/or taxiway lighting to get the attention of the vehicle. Secondly, the tower will use the following light gun signals to give instructions. Drivers will be fully familiar with the following light signals if operating on the airport.

LIGHT GUN SIGNALS

Color and Type of Signal	Movement of vehicles equipment and personnel
Steady Green	Cleared to cross, proceed to go
Steady Red	STOP
Flashing Red	Clear the taxiway/runway
Flashing White	Return to starting Point on airport
Alternating Red and Green	Exercise extreme caution

7.3 OBSTRUCTIONS

Detail of the obstructions at Pago Pago International Airport is covered in Section 5.4 Marking and Lighting, of this Manual.

7.4 PROTECTION OF NAVAIDS

All NAVAIDS located at Pago Pago International Airport will be protected against vandalism and theft by either fencing or by closely monitoring those areas not fenced. Access into and with the perimeter of the air operations area is closely monitored and controlled.

As discussed in Section 4.4 Utilities Interruption, all construction projects on the airfield are evaluated to determine any possible interference with NAVAID signals or operation. Individuals planning construction projects on the airport (or in the vicinity of the airport which could cause a hazard to air navigation) must submit FAA Form 7 460-1 prior to construction. Preconstruction conferences are held on all projects that impact the air operations area.

“As built” prints are on file in the Airport Manager’s Office showing all underground utility lines that, if interrupted, would cause interference with the facility. Contractors are required to have prints of the

underground utility lines in their area of activity. Contractors are also required to contact American Samoa Power Authority (ASPA) so they can mark their respective Lines. If any line is cut, it will be reported to the Airport Manager immediately so that repairs can be arranged. If the break involves the operation of a NAVAID, ATCT shall be notified so that a NOTAM can be issued.

7.5 PUBLIC PROTECTION

The Pago Pago International Airport will provide, fencing, gates, signs, and procedures to safeguard against inadvertent enter onto any airport movement area by persons or vehicles that may endanger air carrier aircraft operations. In addition, the Airport Security Plan required by FAR Part 107 approved by FAA requires both personnel and vehicle identification to obtain access to the Air Operations Area (AOA).

7.6 WILDLIFE HAZARD MANAGEMENT

The Pago Pago International Airport does not have a wildlife problem. However, the airport will take immediate measures to alleviate any wildlife hazards that are detected. The FAA shall be contacted to arrange for an ecological study to be conducted whenever;

1. Any aircraft experiences a multiple bird strike or engine ingestion on the airport or on final approach or departure.
2. Any aircraft experiences a damaging collision with wildlife other than birds.
3. Wildlife of a size and in numbers capable of causing an event such as 1. and 2., above is observed to have access to any airport flight pattern or movement area.

Should an independent ecological study be conducted, it shall contain at least those items listed in FAR Part 139.337 (b) and shall be submitted to the Administrator for review.

7.7 AIRPORT Condition REPORTING

The following personnel are authorized to issue NOTAMs:

Airport Manager

Assistant Airport Manager

Supervisors

NOTAMs will be issued utilizing the Notice to Airmen system, by contacting ATCT FSS at 699-9195. A copy of the form used for logging and canceling NOTAMs is included as Exhibit 4-4.

NOTAMs will be issued covering at least the following:

1. Construction or maintenance work on pavement or safety areas.
2. Rough or wavy portions of pavement or safety areas.
3. The presence and depth of water on runways or taxiways.
4. The presence of parked aircraft or other objects on or next to, runways or taxiway.
5. The failure or irregular operations of all or part of the airport lighting system, including the approach, threshold, runway, taxiway, and construction lights operated by the operator of the airport.
6. Unresolved wildlife hazards as indicated in Section 7.6.
7. Non-availability of any required ARFF capability.

The individual issuing the NOTAM shall be responsible for canceling the NOTAM with the ATCT FSS. Cancellation information will be noted in the NOTAM log along with the FS specialist's initials and date/time group.

7.8 CONSTRUCTION AREA MARKING

All construction projects that involve any area where air carrier aircraft operate at Pago Pago International Airport require the construction contractor to mark and light the construction ight and equipment as required by the FAA Advisory Circular 150 series or as approved by he FAA at the time of plans approval. All plans and specifications contain:

1. Each construction area and unserviceable area which is on/or adjacent to any movement area.

2. Each item of construction equipment and each construction roadway which affects or may affect the safe movement of aircraft on the airport.
3. Any area adjacent to a NAVAID that, if traversed, could cause false signals or failure of the NAVAID.

Drawings of existing utility facilities are on file and available so that during construction, procedures can be developed to avoid interfering with existing utilities, cables, wires, conduits, pipelines, or other underground facilities.

7.9 NONCOMPLYING CONDITIONS

The Pago Pago International Airport shall limit air carrier operations from those portions of the airport that are declared unsafe for air carrier operations.

TITLE 21 – CHAPTER 02 – AIRCRAFT LANDING AND PARKING CHARGES

Sections:

- 21.0201 Landing charges.
- 21.0202 Parking fees.
- 21.0203 Exceptions.
- 21.0204 Other charges excluded.
- 21.0205 Enterprise Fund.
- 21.0206 Applicability.
- 21.0207 Repealer.
- 21.0208 Authority.

21.0201 Landing charges.

- (a) The landing charges in this section shall entitle the aircraft to a maximum period of 3 hours ground time without extra charge.
- (b) The rate of the landing charge for aircraft of more than 12,500 pounds approved maximum gross takeoff weight, per 1,000 pounds, or fraction thereof, per landing is \$3.10 for the period beginning January 1, 1990 and ending December 31, 1990.
- (c) For purposes of subsection (b) of this section, the rate of the landing charge for each calendar year shall be determined, and adjusted as necessary, to derive sufficient revenue to equal

the difference between the total of the following specified expenses on one hand, and other revenues, on the other hand, from the operation of Pago Pago International Airport during the preceding fiscal year, provided that categories of expenses and other revenues shall be based on projections for the current fiscal year when those projections increase or decrease. the category for the preceding fiscal year by 10% or more, adjusted each year commencing January 1 by carrying over the net income or net loss averaged over the two preceding fiscal years.

The foregoing notwithstanding, the then existing rate shall be reviewed as of March 31 and adjusted as of July 1 each year, and may be reviewed and adjusted at other times during the year, to reflect significant changes in revenues or expenses, or both. The expenses shall include personnel costs, travel, contractual services, materials and supplies, utilities, total depreciation times and the ratio that territorial funds invested in plant-in-service bears to the total funds invested in the plant, bad debts, and miscellaneous expenses. Other revenues shall include landing charges from military and naval aircraft, or any other aircraft, aircraft parking charges, service charges for use of the terminal facilities, rental income, and miscellaneous income.

- (d) The rates of the landing charges for aircraft of 12,500 pounds or less approved maximum gross takeoff weight are \$20 per landing for aircraft based outside American Samoa and \$10 per landing for locally based aircraft, provided that when paying passengers are on board the aircraft at the time the rates of the landing charges for such aircraft are as follows:
 - (1) \$10 per landing for aircraft having a designed maximum passenger capacity of more than 10 persons;
 - (2) \$5 per landing for aircraft having a designed maximum passenger capacity of 4 to 10 persons; (3) \$2 per landing for aircraft having a designed maximum passenger capacity to 3 persons or less.

History: Arcft. Lndng. and Pkng. Chgs., eff 16 Dec. 73. § (a); and Rule 8-76, eff 6 Oct 76, (part); Rule 12-

79, eff 23 Jan 80. (part); Rule 7-81, eff 2 Jun 81, § 2 (b); and Rule 11.82, eff 30 Nov 82, § 2; Rule 7-84, eff 31 May 84, § 1; Rule 15-84, eff 1 Jan 85, §; Rule 7-85, eff 16 Jan 86, § 1; and Rule 5-86, eff 1 Jan 87, § 1; and Rule 18-87, eff 1 Jan 88, § 1; and Rule 13-88, eff 1 Jan 89, § 1; and Rule 5-89, eff 1 Aug 90, § 1.

21.0202 Parking fees.

Parking fees shall be assessed after an aircraft has been on the ground more than 3 hours and shall start at the end of the 3-hour period: \$0.025 per 1,000 pounds, or fraction thereof, per 24-hour period or fraction (minimum of 24 hours).

History: Arcft. Lndng. and Pkng. Chgs.. eff 16 Dec 73, 1(b).

21.0203 Exceptions.

- (a) No landing fees shall be charged against aircraft when such aircraft is landing from a search-and-rescue mission, a medical air evacuation or other emergency.
- (b) Aircraft, after takeoff from an airport in American Samoa forced to return due to mechanical problems and/or weather conditions, will not be charged landing fees.
- (c) Aircraft unable to depart due to mechanical difficulties or weather conditions will not be charged parking fees. It shall be the duty of the airport manager to determine whether or not such conditions or difficulties, as outlined in this subsection, exist.
- (d) Locally based airline companies or air taxi services who lease ground space at the airport will not be charged any parking fees.
- (e) Aircraft landing after a test or training flight shall be exempted from half the landing charges enumerated in 21.0201.
- (f) Locally based airline companies or air taxi services shall be exempt from all landing fees after a test or training flight so long as no paying passengers are on board the aircraft at the time.
- (g) The following categories of aircraft are exempt from all airport charges:
 - (1) FAA aircraft and aircraft chartered by FAA to conduct flight checks;
 - (2) U.S. Coast Guard aircraft;

- (3) Aircraft on diplomatic missions.

- (h) Other U.S. military or naval aircraft are subject to landing and parking charges as may be imposed from time to time by agreements with the United States Government.

History: Arcft. Lndng. and Pkng. Chgs. eff 16 Dec 73, 1 (c); and Rule 12-79. eff 23 Jan 80, (part); and Rule 5-86, eff 1 Jan 87 § 2: and Rule 13-88, eff 1 Jan 89, 12.

21.0204 Other charges excluded.

Rates for lease or rental of grounds, buildings, or other space at the airport are not included in this chapter.

History: Arcft. Lndng. and Pkng. Chgs. eff 16 Dec 73, § (d).

21.0205 Enterprise Fund.

All revenues derived from the charges established by this chapter shall be accounted for in the Airport Enterprise Fund for operation and maintenance expense, capital improvements, and retirement of obligations created for capital purposes.

History: Arcft. Lndng. and Pkng. Chgs, eff 16 Dec 73. § (e); and Rule 8-76. eff 6 Oct 76, (part).

21.0206 Applicability

The provisions of this chapter are applicable to Pago Pago International Airport. The provisions of 21.0201(d), 21.0203, 21.0204 and 21.0208 are also applicable to Ofu Airport.

History: Arcft. Lndng. and Pkg. Chgs, eff 16 Dec 73. § (f); and Rule 8-76. eff 6 Oct 76. (part); and Rule 5-86. eff 1 Jan 87, § 3.

21.0207 Repealer.

General Memorandum No. 70-1969 cancelled in its entirety.

History: Arcft. Lndng. and Pkng. Chgs., eff 16 Dec 73, § (g).

21.0208 Authority.

The rule codified in this chapter is adopted under the authority of 21.0515(d) A.S.C.A.

History: Arcft. Lndng. and Pkng. Chgs., eff 16 Dec 73, § (h); and Rule 8-76, eff 6 Oct 76. (part).

TITLE 22 – HIGHWAYS AND MOTOR VEHICLES

Chapters:

- 01 Vehicle Licensing and Registration
- 02 Compulsory Insurance

TITLE 22 – CHAPTER 01 – VEHICLE LICENSING AND REGISTRATION

Sections:

- I. REGISTRATION GENERALLY*
- 22.0101 Authority.
- 22.0102 Purpose.
- 22.0103 Current registration and tag display mandatory.
- 22.0104 Fee-Safety, insurance certificates.
- 22.0105 Renewal date.
- II. NEWLY PURCHASED OR IMPORTED VEHICLES*
- 22.0110 Authority.
- 22.0111 Purpose-Applicability.
- 22.0112 Newly purchased vehicles.
- 22.0113 Imported motor vehicles.
- 22.0114 Existing imported motor vehicles.
- 22.0115 Temporary license tag distribution.

I. REGISTRATION GENERALLY.

22.0101 Authority.

The rule codified in this article is issued under the authority of 22.1004 and 22.1202 (a)

(2) A.S.C.A.

History: Rule 9-79, eff 21 Nov 79, § 1.

22.0102 Purpose.

This article establishes a system for the annual registration of privately owned motor vehicles determined by the first digit of the motor vehicle license number.

History: Rule 9-79, eff 21 Nov 79, § 2.

22.0103 Current registration and tag display mandatory.

No privately owned motor vehicle shall be operated on any public highway in American Samoa unless it

is currently registered and the motor vehicle license tag issued for it is affixed to it as required by 22.1001 and 22.1003 A.S.C.A.

History: Rule 9-79, eff 21 Nov 79, § 3.

22.0104 Fee-Safety, insurance certificates.

In accordance with 22.1002 A.S.C.A., no privately owned motor vehicle shall be registered without:

- (1) payment of the annual motor vehicle license fee of \$25 prescribed by 22.1002 A.S.C.A., or the prorated amount thereof when applicable under 22.0105 (b), of this chapter;
- (2) presentation of an official certificate of safety inspection issued pursuant to 22.1201 through 22.1231 A.S.C.A., within the immediately preceding 10 days;
- (3) presentation of a certificate of compulsory motor vehicle liability insurance coverage required by 22.2001 through 22.2019 A.S.C.A., and effective for the entire, succeeding period of registration.

History: Rule 9-79, eff 21 Nov 79, § 4.

22.0105 Renewal date.

(a) Effective 1 Oct 79, the first digit of the motor vehicle license number issued upon new or renewal registration of each privately owned motor vehicle will correspond to the month of issuance, as follows:

- | | |
|---|-------------------|
| 1 | January |
| 2 | February |
| 3 | March |
| 4 | April |
| 5 | May |
| 6 | June |
| 7 | July |
| 8 | August |
| 9 | September |
| 0 | October-December. |

- (b) The registration of a privately owned motor vehicle during each month shall expire annually on the last day of the same month during the next succeeding year; provided, that in order to facilitate this registration system and accommodate the program for safety inspection of ASG vehicles during November and December of each year, new registrations during October, November, and December of each year shall expire on 31 Oct of the next succeeding year. The annual motor vehicle license fee for new registrations in November or December shall be prorated accordingly.

History: Rule 9-79, eff 2-1 Nov 79, § 6.

II. NEWLY PURCHASED OR IMPORTED VEHICLES

22.0110 Authority.

The rule codified in this article is adopted under the authority of 22.1004, 22.1005 (2), 22.1005 (4), and 22A 202 (a) (2) A.S.C.A.

History: Rule 12-80, eff 1 Jul 80, § 1.

22.0111 Purpose-Applicability.

This article establishes the system for the registration and licensing of privately owned motor vehicles which are newly purchased from licensed dealers in American Samoa or directly imported by the owner, with or without valid license tags issued by another jurisdiction, into American Samoa.

History: Rule 12-80, eff Jul 80, § 2.

22.0112 Newly purchased vehicles.

- (a) No licensed dealer in American Samoa shall deliver a privately owned motor vehicle to the purchaser unless and until the purchaser provides the dealer or his authorized representative with a certificate of compulsory motor vehicle liability insurance coverage required by 22.2001 through 22.2019 A.S.C.A., and effective through the last day of the same month 1 year after the month in which the insurance coverage is issued.
- (b) Upon presentation of the certificate of compulsory motor vehicle liability insurance coverage, the licensed dealer shall cause to be affixed in the rear window of the motor vehicle,

preferably in the lower right-hand corner, a temporary license tag on which the dealer has marked in bold numerals the expiration date as the fifth day, excluding Saturday and Sunday

- (c) after the date of delivery of the motor vehicle to the purchaser.
- (c) The purchaser of the motor vehicle shall have the vehicle inspected, registered, and licensed on or before the expiration date of the temporary license tag in accordance with 22.1002 and 22.1202 A.S.C.A., and Article 1 of this chapter.

History: Rule 12-80, eff 1 Jul 80, § 3.

22.0113 Imported motor vehicles.

- (a) Except as provided in 22.0114, the period of exemption permitted under 22.1004 and 22.1005 (2) A.S.C.A., from registration and licensing in American Samoa of any motor vehicle validly registered and licensed in another jurisdiction expires immediately upon arrival of the vehicle in American Samoa.
- (b) The director of port administration shall not release a privately owned motor vehicle to the owner upon its importation into American Samoa unless and until the owner provides the director or his authorized representative with a certificate of compulsory motor vehicle liability insurance coverage required by 22.2001 through 22.2019 A.S.C.A., and effective through the last day of the same month 1 year after the month in which the insurance coverage is issued, and further removes any license tags issued by another jurisdiction from the vehicle.
- (c) Upon presentation of the certificate of compulsory motor vehicle liability insurance coverage and removal of any foreign license tags from the vehicle, the director of port administration shall cause to be affixed in the rear window of the motor vehicle, preferably on the lower right-hand corner, a temporary license tag on which the port director has marked in bold numerals the expiration date as the fifth day, excluding Saturday and Sunday, after the date of release of the motor vehicle to the owner.
- (d) The owner of the motor vehicle shall have the vehicle inspected, registered, and licensed on or

before the expiration date of the temporary license tag in accordance with 22.1002 and 22.1202 A.S.C.A., and Article 1 of this chapter.

History: Rule 12-80, eff 1 Jul 80, § 4 (d).

22.0114 Existing imported motor vehicles.

- (a) The period of exemption permitted under 22.1004 and 22.1005 (2) A.S.C.A., from registration and licensing in American Samoa of any motor vehicle validly registered and licensed in another jurisdiction upon arrival in American Samoa before and still valid on 1 Jul 80 expires on 31 Jul 80.
- (b) The owner of any motor vehicle validly registered and licensed in another jurisdiction upon arrival in American Samoa before 1 Jul 80 shall have the vehicle inspected, registered and licensed on or before 31 Jul 80 in accordance with 22.1002 and 22.1202 ASCA, and Article 1 of this chapter.

The owner shall further remove the license tags issued by another jurisdiction from the vehicle at the time but before completion of the registration.

History: Rule 12-80, eff 1 Jul 80, § 8.

22.0115 Temporary license tag distribution.

All temporary license tags issued under this article shall be serialized and distributed to licensed dealers and the director of port administration under the direction of the director of traffic safety.

History: Rule 12-80, eff 1 Jul 80. § 6.

TITLE 22 – CHAPTER 02 – COMPULSORY INSURANCE

Sections:

- I. ASSIGNED RISK FOR TRANSIT-VEHICLE COVERAGE
- 22.0201 Authority.
- 22.0202 Established.
- 22.0203 Insurance carrier mandatory participation, legal compliance.
- 22.0204 Referral by carriers-Assignment by insurance commissioner.
- 22.0205 Enforcement-Penalty for violation.

- II. SAFE DRIVER PLAN
- 22.0210 Authority.
- 22.0211 Adoption.
- 22.0212 Applicability-Point assignment for accidents and violations.
- 22.0213 Point values of violations-Territorial-point system.
- 22.0214 Multiple vehicles under one policy.
- 22.0215 Other operators in household.
- 22.0216 Rate-change procedure.
- 22.0217 Information sources for point assignment.
- 22.0218 Application form.

I. ASSIGNED RISK FOR TRANSIT-VEHICLE COVERAGE

Prior History: Emergency Rule 2-79, eff 1 Mar 79.

22.0201 Authority.

The regulation codified in this article is adopted pursuant to 29.0205 and 29.0216 A.S.C.A.

History: Rule 4-79, eff 26 Jul 79. § 1.

22.0202 Established.

There is established an assigned risk arrangement for the issuance of motor vehicle liability insurance coverage of vehicles used in transportation of passengers for hire including buses and taxis, which shall be governed by the provisions of this article.

History: Rule 4-79, eff 26 Jul 79, § 2.

22.0203 Insurance carrier mandatory participation, legal compliance.

Every insurance carrier authorized to engage in the business of motor vehicle liability insurance in American Samoa shall participate in the assigned risk arrangement established by 22.0202, and shall conduct such business in compliance with all applicable insurance laws and rules of American Samoa.

History: Rule 4-79, eff 26 Jul 79, § 3.

22.0204 Referral by carriers-Assignment by insurance commissioner.

- (a) Insurance carriers may issue to the applicant motor vehicle liability insurance coverage of vehicles used for transportation of passengers for hire, including buses and taxis. However, if the

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carriers determine not to issue insurance to any applicant, the applicant and application shall be referred to the insurance commissioner for assignment under the assigned-risk arrangement. The carriers are jointly and severally responsible to make the referrals.

- (b) The insurance commissioner shall assign the risk of coverage to one of the insurance carriers authorized to engage in the business of motor vehicle liability insurance in American Samoa. Assignment shall be on a rotational basis in alphabetical order among the carriers.

History: Rule 4-79, eff 26 Jul 79, § 4.

22.0205 Enforcement-Penalty for violation.

- (a) The insurance commissioner may enforce the provisions of this article by any means authorized under the insurance laws of American Samoa.
- (b) Violation of any provision of this article by an insurance carrier shall be grounds for suspension or revocation of the carrier’s certificate of authority in accordance with the insurance laws of American Samoa.

History: Rule 4-79. eff 26 Jul 79, § 5.

II. SAFE DRIVER PLAN

22.0210 Authority.

The rule codified in this article is promulgated under the authority of 29.0216 and 29.1564 A.S.C.A.

History: Rule 5-78, eff 26 Jun 78, § 1.

22.0211 Adoption.

The “Safe Driver Plan”, as described in 29.1564 A.S.C.A., is adopted.

History: Rule 5-78. eff 28 Jun 78, § 2.

22.0212 Applicability-Point assignment for accidents and violations.

- (a) This section applies only to the following kinds of private motor vehicles:
 - (1) Four-wheel motor vehicles of the passenger, station wagon, or jeep types;
 - (2) Four-wheel motor vehicles of the pickup or other truck type with a load capacity of

1,500 pounds or less not used for business or commercial purposes other than farming;
or

- (3) Motorcycles and motorbikes.
- (b) Points shall be assigned for violations for which the applicant or any operator of the motor vehicle currently resident in the same household has been convicted during the experience period.
 - (1) Three points shall be assigned for conviction of:
 - (A) driving while intoxicated or under the influence of drugs; or
 - (B) failure to stop and report when involved in an accident; or
 - (C) homicide or assault arising out of the operation of a motor vehicle; or
 - (D) driving during a period while license is suspended or revoked.
 - (2) Two points shall be assigned for the accumulation of 12 points under the territorial point system established by 22.0213.
 - (3) One point shall be assigned for conviction of any other moving traffic violation as a result of which an operator’s license was suspended or revoked.
- (c) One point shall be assigned for each motor vehicle accident during the experience period involving the applicant, or any operator or the motor vehicle currently resident in the same household, resulting in damage to any property, including his own, in excess of \$200 or in bodily injury or death. One point shall be assigned, if, during the experience period, there were 2 or more accidents, each of which resulted in damage to property of \$200 or less. No points shall be assigned under the applicant’s policy for accidents incurred by an operator demonstrated to be a named insured or principal operator of an automobile insured under a separate policy, or for accidents if the insured demonstrates that the accident occurred under the following, circumstances:

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- (1) The motor vehicle was law fully parked (a motor vehicle rolling from a parked position shall be considered as the operation of the last operator); or
 - (2) The applicant or another operator residing in the same household, or owner, was reimbursed by or on behalf of a person responsible for the accident or has judgment against such person; or
 - (3) The motor vehicle of an applicant or other operator resident in the same household was struck in the rear by another vehicle, and the applicant or other resident operator has not been convicted of a moving traffic violation in connection with the accident; or
 - (4) The operator of the other motor vehicle involved in such accident was convicted of a moving traffic violation and the applicant or other operator resident in the same household was not convicted of a moving traffic violation in connection therewith; or
 - (5) The motor vehicle operated by the applicant or other operator resident in the same household was damaged by a “hit-and-run” driver, if applicant or other operator so reported the accident to proper authority within 24 hours; or
 - (6) An accident involving damage by contact with animals or fowl; or
 - (7) Accidents involving physical damage limited to and caused by flying gravel, missiles, or falling objects; or
 - (8) An accident occurring as a result of the operation of any motor vehicle in response to an emergency, if the operator, at the time of the accident, was responding to a call to duty as a paid or volunteer member of any fire department first aid squad, or law enforcement agency.
- (d) The experience period shall be the 3 years immediately preceding the date of application or the preparation of the renewal.
 - (e) For purposes of this article, operators currently resident in the same household as the applicant

shall include all persons, whether or not related by blood, who are living in the same housing unit or are living in other housing units on contiguous land of his family.

History: Rule 5-75, eff 28 Jun 78, § 3.

22.0213 Point values of violations-Territorial point system.

- (a) The first number listed in paragraphs (b)(1) through (b) (34) of this section are the applicable chapter-section numbers in Title 22 A.S.C.A.
- (b) The accumulation of points for purposes of 22.02 12 (b) (2) shall be based on the following schedule:

	Violation	Points
(1)	.0222 (2) Permit unlawful use of operator’s license	12
(2)	.1003 Unlawful display of license	6
(3)	.1006 Fraudulent registration acts	12
(4)	.0302 Disobeying traffic-control devices	6
(5)	.0305 Failure to drive on right	8
(6)	.0307-.0309 Improper overtaking or passing	10
(7)	.0310 Following too close	12
(8)	.0311 Right-of-way, unregulated intersection	10
(9)	.0312 Right-of-way, regulated intersection	6
(10)	.0401 Right-of-way, pedestrians	6
(11)	.0316 Improper turn or stop signals	4
(12)	.0319 Passing stopped school bus	10
(13)	.0320 Obstructing traffic	6
(14)	.0323 Speeding, 1-14 MPH in excess	6
(15)	.0323 Speeding, 15-29 MPH in excess	10
(16)	.0323 Speeding, over 29 MPH excess	12
(17)	.0324 Improper backing	4
(18)	.0325 Driving on sidewalk	8
(19)	.0331 Riding on load	6
(20)	.0701 Careless driving	8
(21)	.0702 Reckless driving	12
(22)	.0703 Carrying passengers improperly	6
(23)	.0705 Fleeing from police officer	10

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(24)	.0708	Driving under influence, bodily injury	12
(25)	.1101	Driving without lights	6
(26)	.1101(d)	Failure to dim lights	4
(27)	.1103	No lamp or flag, projecting load	4
(28)	.1108	Defective brakes	6
(29)	.1113	Obstructed vision	4
(30)	.0214	No helmet	4
(31)	.1150	Other unsafe equipment	4
(32)	.0352	No safety inspection tag	6
(33)	.0352	Duty to emergency vehicle	4
(34)	.2002	No liability insurance	12
(35)			
(36)			
(37)			
(38)			

22.0214 Multiple vehicles under one policy.

When 2 or more private motor vehicles to which the Safe Driver Plan is applicable are insured in the same policy, points shall be assigned to 1 motor vehicle with the highest rate in accordance with 22.0212, and no points shall be assigned to the other vehicles.

History: Rule 5-78, eff 28 Jun 78, § 8.

22.0215 Other operators in household.

The points of both the applicant and all other operators, currently resident in the same household, of the motor vehicle to which the Safe Driver Plan is applicable shall be cumulative.

History: Rule 5-78, eff 28 Jun 78, § 6.

22.0216 Rate-change procedure.

No policy shall be endorsed in term to effect a change of premium rates. Such change may be effected only by cancellation of the policy on a short rate basis and rewriting for an annual term, or such other term as may be required by law or rule, on the basis of a new, signed application.

History: Rule 5-78, eff 28 Jun 78, § 7.

22.0217 Information sources for point assignment.

(a) New Business (risks not written by the company under the Safe Driver Plan for the previous 12 months). The initial information necessary to assign the proper number of points shall be obtained from an application signed personally

by the applicant under oath. The signature of the applicant on all applications received from an agent, broker, or solicitor shall be certified by such agent, broker, or solicitor.

(b) Renewal Business (risks written by the company under the Safe Driver Plan for the previous 12 months). The information necessary to assign the proper renewal number of points shall be determined from any 1 or a combination of the following:

- (1) Company’s own records; or
- (2) Motor vehicle records; or
- (3) An application signed by the applicant and certified by an agent, broker, or solicitor.

History: Rule 5-78, eff 28 Jun 78, § 8.

22.0218 Application form.

The following form shall be used to obtain from the applicant the information under oath necessary to assign the proper initial number of points. It may, however, be expanded to require additional information or the sequence of the items may be rearranged:

Date of Application _____

1. Name _____ of _____ Applicant

 First Middle Last

Address _____

Driver’s Date of Birth _____

Lic. No _____

Previous address during Fast three years

2. Other operators of the motor vehicle resident in the same household as the applicant: *

Name Date of Birth Driver’s Lic. No.

* Includes all persons, whether or not related by blood, who are living in the same housing unit or other housing units in contiguous family land.

3. Statement of Convictions

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Has the applicant or any other person named in (2) been convicted of any of the following motor vehicle violations during the preceding 36 months?

(Yes or No)

Yes Date

- (a) Driving while under the influence of alcoholic beverage or other drug
- (b) Failure to stop and report when involved in an accident
- (c) Homicide or assault arising out of the operation of a motor vehicle
- (d) Driving during a period while license is suspended or revoked
- (e) Any convictions of other traffic violations.

4. Statement of Accidents

Has the applicant or any person named in (2) been involved in an automobile accident while operating any private motor vehicle, resulting in damage to any property, including his own, or in bodily injury or death during the preceding 26 months?

(Yes or No)

If “Yes”, complete the following:

Date of Accident	Location of Accident	Bodily Injury or Death (Yes or No)	Damage to Property (Amount)

If the answers to any of the following are “Yes” insofar as they involve the applicant, person residing in his household, or owner of the automobile being used, so state and give date of accident.

Yes Date of Accident

- (a) Motor lawfully parked and not rolling.
- (b) Automobile struck in rear end and applicant or person residing in his household was not convicted.

- (c) Reimbursed by, or in behalf of, person responsible for the accident or have judgment against such person.
- (d) Other person involved in accident was convicted. Applicant or person residing in his household was not convicted.
- (e) Damaged by “hit-and-run” driver and accident reported to police within 24 hours from time of accident.
- (f) Damage solely by contact with animals or fowl.
- (g) Damage solely by flying gravel, missiles, or falling objects.
- (h) Accident while responding to emergency call to duty as paid or volunteer member of any Fire department, First aid squad or law enforcement agency.

I am aware that I make this application under oath and that under the laws of American Samoa (29.0107 A.S.C.A.) it is a Felony to knowingly make a material false statement or conceal any material fact in this application. I hereby consent to allow my insurance company to obtain a certified copy of my driving records from the Office of Motor Vehicles at any time subsequent to my completion of this application.

Signature of Applicant

Subscribed and sworn to before me this _____ day of _____ 19____ at _____, American Samoa.

Signature and Title of person authorized to administer oath

History: Rule 5-78, eff 28 Jun 78, § 9.

END OF TITLE 22 – HIGHWAYS AND MOTOR VEHICLES